



**OFFICE OF THE COMMISSION AUDITOR
MIAMI-DADE BOARD OF COUNTY COMMISSIONERS**

**COMMISSION AUDITOR'S
INFORMATIONAL RESEARCH**

TOURISM AND THE PORTS COMMITTEE MEETING

October 15, 2020

9:30 A.M.

Virtual Meeting

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Commission Auditor

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**Item No. 3A
File No. 201955**

Researcher: JFP Reviewer: PGE

RESOLUTION APPROVING, BY TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT, CONTRACT FOR SALE AND PURCHASE BY MIAMI-DADE COUNTY FOR THE ACQUISITION OF APPROXIMATELY 61,546 SQUARE FEET OF OFFICE AND WAREHOUSE SPACE ON 99,760 SQUARE FEET OF LAND LOCATED WEST OF MIAMI INTERNATIONAL AIRPORT FROM CASA MAR INVESTMENTS, INC., AS SELLER, FOR A PURCHASE PRICE OF \$10,200,000.00; APPROVING LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TRANSWAY AIRFREIGHT CARGO, INC. FOR LEASE OF 22,000 SQUARE FEET OF THE 61,546 SQUARE FEET OF OFFICE AND WAREHOUSE SPACE, FOR A TERM OF FIVE YEARS AT A MONTHLY RENTAL RATE OF \$12,833.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SALE AND PURCHASE CONTRACT, TO EXERCISE ALL PROVISIONS CONTAINED THEREIN, TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE THIS TRANSACTION AND TO ACCEPT CONVEYANCE OF THE PROPERTY BY WARRANTY DEED; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE LEASE AGREEMENT AND TO EXERCISE THE PROVISIONS CONTAINED THEREIN, INCLUDING TERMINATION; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO RECORD THE WARRANTY DEED IN THE PUBLIC RECORDS AND PROVIDE SAID DEED TO THE CLERK OF THE BOARD; DIRECTING THE CLERK OF THE BOARD TO ATTACH AND PERMANENTLY STORE THE WARRANTY DEED WITH THIS RESOLUTION; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE AN EXECUTED COPY OF THE AGREEMENTS TO THE PROPERTY APPRAISER WITHIN 30 DAYS OF THEIR EXECUTION

ISSUE/REQUESTED ACTION

Whether the Board should authorize a sale and purchase contract with Casa Mar Investments, Inc. (Seller) in the amount of \$10,200,000 for the acquisition of 99,760 square feet of land located west of Miami International Airport, 61,546 square feet of which is office and warehouse space, as well as a lease agreement with Transway Airfreight Cargo, Inc., the current lessee, for 22,000 square feet of the warehouse space, producing an estimated \$825,000 in County revenue for the five-year lease term.

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Jose "Pepe" Diaz, District 12
Department/Requester: Aviation Department

This item has no procedural history.

ANALYSIS

The purpose of this item is to approve the instruments required for the County's acquisition of real property located on the west side of Miami International Airport at 2205 NW 70 Avenue in furtherance of the County's Capital Improvement Plan for growth at Miami International Airport to accommodate the airport's cargo needs. The 99,760 square foot lot includes approximately 61,546 square feet of office and warehouse space, 22,000 feet of which are currently leased by Transway Airfreight Cargo, Inc. (Lessee). Once acquired, the County will continue the Seller's lease of the property to the Lessee for a term of five years, and plans to lease the remaining 39,545 square feet to additional cargo handling companies to offset the \$10,200,000 cost of purchasing the property.

In accordance with Section 2-10.4.2(a) of the County Code, the Miami-Dade Aviation Department (MDAD) had the property appraised by three state-certified appraisers on separate occasions, resulting in the property being appraised at \$8,300,000 by two appraisers in 2019, with a third appraiser determining an appraisal value of \$9,230,000 one year later

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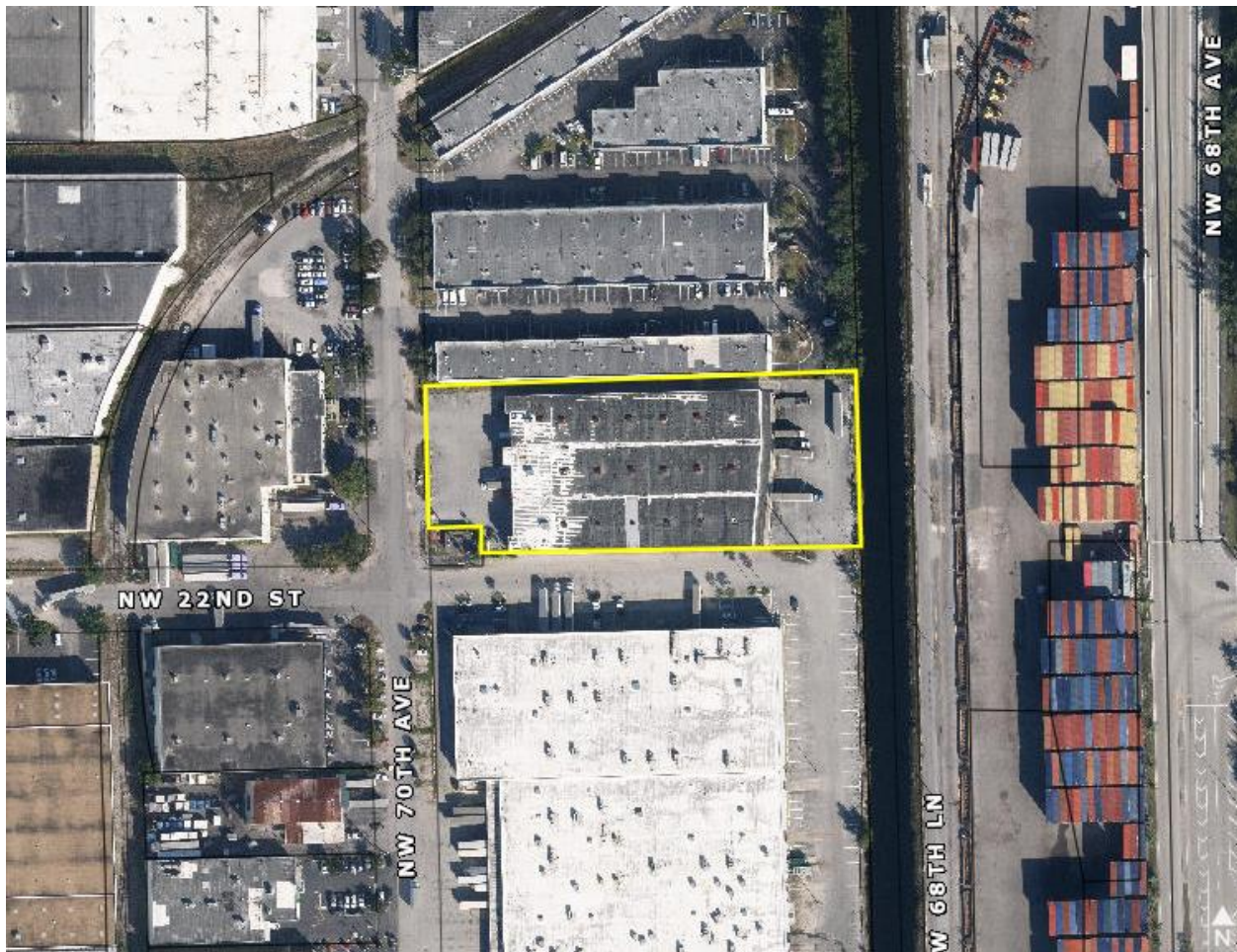
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in August 2020. The highest appraisal value of \$9,230,000 is \$970,000, or 10.5% less than the agreed upon sale and purchase price. According to the Miami-Dade Property Appraiser's website, the assessed value of the property for 2020 is \$4,538,710, or 55.5% less than the \$10,200,000 purchase price. Given that the agreed purchase price exceeds the average of the appraised values as determined by the three appraisers, the Board is required to approve the purchase by a two-thirds vote, as prescribed by Section 125.355, Florida Statutes.

The Mayoral Memorandum noted that industrial property available for sale west of MIA is a rarity. MDAD confirmed that the subject property is the only property that has been available for purchase in over one year. The property is strategically located with optimal connectivity to MIA, making it ideal for cargo handling.

The property, Folio No. 30-3035-003-0030, is depicted in the graphic below.



The secondary lease with Transway Airfreight Cargo, Inc. for the 22,000 square feet of warehouse and office space will produce \$154,000 in annual revenue to the County for each of the first two years, with the rental rate starting at \$7.00 per square foot and increasing by \$0.50 per square foot each year for the third and fourth years, ultimately amounting to an

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estimated \$825,000 in County revenue for the five-year lease term. The leased square footage and corresponding initial rental rate consists of the following:

Description	Area (sq. ft.)	Monthly Rent	Annual Rent
A/C Office Ground Floor	500	\$291.67	\$3,500
Non-AC Warehouse	16,030	\$9,350.83	\$112,210
A/C Office Mezzanine	2,559	\$1,492.75	\$17,913
Covered Loading Platform	2,911	\$1,698.08	\$20,377
TOTAL	22,000	\$12,833.33	\$154,000

Pursuant to the lease agreement, the Lessee is to use the premises for receiving, storing, consolidating and packaging of cargo; handling of dry goods and salvaged automobiles for third parties (Lessee's customers) including pickup and delivery, loading and unloading cargo transported or to be transported by air or land and performing freight forwarding business; operation of bonded and non-bonded warehouses; for normal operations associated with the Lessee's cargo handling business; and such other activities as are directly related or incidental to the authorized cargo handling use of the premises. All the listed activities are to be performed by employees, agents, or vendors of the Lessee.

OCA's due diligence on Seller, Casa Mar Investments, Inc., is detailed below.

Awarded Firm	Corporate Registration	Tax Collector's Office	Florida DBPR	Litigation (Westlaw)
Casa Mar Investments, Inc.	Florida Profit Corporation Active Principal Address: 2205 NW 70 th Ave. Miami, FL 33164 Filed: August 11, 1994	Business Address: Unincorporated location in Miami-Dade County. Status: Paid and Current	No account on file.	No cases.

OCA's due diligence of the Lessee, Transway Airfreight Cargo, Inc. is detailed below.

Awarded Firm	Corporate Registration	Tax Collector's Office	Florida DBPR	Litigation (Westlaw)
Transway Airfreight Cargo, Inc.	Florida Profit Corporation Active Principal Address: 2205 NW 70 th Ave.	Owner Address: 2205 NW 70 th Ave. Miami, FL 33122 Status: No taxes due.	No account on file.	<i>Mohammed Biltagi v. Transway Airfreight Cargo Inc.</i> (Case No. 2019-035052-CA-01). Filed in the Eleventh Judicial Circuit, Miami-Dade County on December 2, 2019. Allegation: Defendant through conversion

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	Miami FL 33122 Filed: December 31, 1981			refused to return cargo valued at \$55,000 to plaintiff and converted the product to its own use resulting in damages to plaintiff. Case status: Open; Calendar Call held on September 29, 2020.
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ADDITIONAL INFORMATION

MDAD Capital Improvement Plan

On June 4, 2019, the Miami-Dade County Board of County Commissioners adopted a new capital improvement program at Miami International Airport that will fund up to \$5 billion in airport-wide modernization projects over the next five to 15 years, paving the way for future growth in passenger and cargo traffic at MIA - projected to reach 77 million travelers and more than four million tons of freight by the year 2040.

The comprehensive program is designed to address all of the airport's future capacity and operational needs through five sub-programs that include: a redevelopment of Central Terminal concourses E and F; an expanded South Terminal (concourses H and J); renovated Concourse D gates to accommodate additional wide- and narrow-body aircraft, as well as larger regional jets; two new hotels (one which will include a business and conference center with exhibition space) and other miscellaneous landside projects; and expanded aircraft parking positions and warehouses for cargo operations.

http://www.miami-airport.com/capital_improvement.asp

APPLICABLE LEGISLATION/POLICY

Section 125.355, Florida Statutes, delineates the procedure for the proposed purchase of real property by county and prescribes that the county's governing body is required to approve the purchase by an extraordinary vote if the agreed purchase price exceeds the average appraised price of the two requisite appraisals.

http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=125.355&URL=0100-0199/0125/Sections/0125.355.html

Section 2-8.6.5 of the Code of Miami-Dade County governs the purchase, sale or lease of real property.

https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIIICOR_CH2AD_ARTIINGE_S2-8.6.5PUSALEREPR

Section 2-10.4.2(a) of the Code of Miami-Dade County (Appraisers Required for Purchases, Sales and Leases) applies whenever the County purchases, sells or is involved in a lease of real estate, whether as lessor or lessee, and the fee simple value of the property being bought or sold or the annual value of the property being leased is in excess of five million dollars, the County shall prior to consummating the purchase, sale or lease have the property appraised by two real estate appraisers holding the M.A.I. designation.

https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIIICOR_CH2AD_ARTIINGE_S2-10.4.2APREPUSALE

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Resolution No. 974-09, adopted July 21, 2009, directed that any resolution authorizing the execution of instruments creating a County interest in real property shall require such instruments to be recorded in the public records of Miami-Dade County and attached by the Clerk of the Board to the authorizing resolution.

<http://intra/gia/matter.asp?matter=091900&file=true&yearFolder=Y2009>

Resolution No. R-791-14, adopted September 3, 2014, directed the Mayor to provide the Miami-Dade County Property Appraiser a copy of all leases and operating agreements involving County-owned property.

<http://intra/gia/matter.asp?matter=141723&file=true&yearFolder=Y2014>

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**Item No. 3C
File No. 201986**

Researcher: TA Reviewer: PGE

RESOLUTION AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT NO. BW-10100 FOR THE PURCHASE OF HOTEL MANAGEMENT TO DRIFTWOOD HOSPITALITY MANAGEMENT II, LLC IN AN AMOUNT OF 3.5 PERCENT OF GROSS REVENUES NET OF TAXES OR \$15,000.00, WHICHEVER IS GREATER, ON A MONTHLY BASIS, NOT TO EXCEED \$2,100,000.00 IN MANAGEMENT FEES FOR THE INITIAL FOUR-YEAR TERM AND ONE-YEAR OPTION TO RENEW AND ALL OPERATIONAL COSTS FOR THE MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY RENEWAL, CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

ISSUE/REQUESTED ACTION

Whether the Board should approve, by a two-thirds vote of the members present, a designated purchase for management and operation of Miami International Airport (MIA) Hotel to Driftwood Hospitality Management II, LLC, under *Contract No. BW-10100*, in an amount of 3.5% of gross revenues net of taxes or \$15,000, whichever is greater, on a monthly basis and not to exceed \$2,100,000 in management fees for the initial four-year term and one-year option to renew and all operational costs for the Miami-Dade Aviation Department (MDAD).

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Internal Services Department

This item has no procedural history.

ANALYSIS

The purpose of this item is to approve a designated purchase, under *Contract No. BW-10100*, for the management and operation of the MIA Hotel located on the second level of Terminal E, as the existing operator, MCR Investors, LLC, has elected to terminate its contract for convenience. The hotel consists of 259 rooms, a conference center, and auditorium rooms. The previous contract was awarded to MCR Investors, LLC (MCR) via a Request for Qualifications, RFQ-MDAD-16-03, in March 2018 for a five-year term, with one three-year option to renew¹ (Resolution No. R-202-18). The RFQ solicited companies to manage, operate, and maintain the MIA Hotel and related amenities in a first-class manner, 365 days of the year. Article 19.04 of the management agreement provided that the hotel operator may terminate for convenience at its sole discretion upon 180 days written notice, without cause, if deemed to be in its best interest.

Because MCR has terminated the current agreement for convenience, a new hotel operator is immediately required to provide continuity of services. MDAD and the Internal Services Department negotiated with the second ranked firm at the time, Driftwood Hospitality Management II, LLC (Driftwood), and is recommending award to Driftwood as a designated purchase, which requires a two-thirds vote of members present, on the basis that competition was not practicable due to the existing contract terminating as of December 1, 2020.

¹ The mayoral memo dated October 15, 2020 (Legistar No. 201986) states that the contract was for a seven-year term, with *three, one-year* options to renew.

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Table 1 contains the ranking by the Evaluation/Selection Committee of the five firms submitting qualification statements in response to the RFQ in May 2017.

Firm	Total Technical Points	Ranking
MCR Investors, LLC	4625	1
Driftwood Hospitality Hotel Management II, LLC	4477	2
Crescent Hotel Management Services, LLC	3857	3
Hostmark Hospitality Group	3754	4
Yotel Management Company Limited	2301	5

Only MCR Investors, LLC (MCR) and Driftwood appear to have a local presence. MCR has a 2020 Miami-Dade County Local Business Tax (LBT) receipt, evidencing a Miami-Dade office at MIA. The other four firms do not have an LBT account, although Driftwood is being billed for an LBT under a different ownership name: GFII DVI CARDEL FLGLER CTYARD (Courtyard Miami West/FL Turnpike, 11580 NW 105th St., Miami, FL 33178). In addition, an affiliate of Driftwood is based in Coral Gables.

On October 9, 2020, OCA requested from ISD the proposed management agreement with Driftwood, as it was not attached to the mayoral award recommendation. It is not clear if the compensation structure under the contract was the only substantive change. OCA also requested the actual revenue and net income history for the previous management agreement so that a better comparison can be made with the new compensation terms. As in the previous agreement, MDAD continues to pay full reimbursement for all hotel operational costs.

Table 2 summarizes the compensation terms under the previous and proposed agreements.

Hotel Operator	Base Management Fee ²	Incentive Management Fee
MCR Investors, LLC (previous)	2.5% of sales (net of taxes), payable monthly	2.2% of net operating income, as an incentive for superior performance, payable monthly
Driftwood Hospitality Management II, LLC (proposed)	3.5% of Gross Revenues (net of taxes) or \$15,000, whichever is greater, on a monthly basis.	n/a

² Because the proposed management agreement has not been provided by ISD, it is not clear if “sales” in the previous agreement is defined the same as “Gross Revenues” in the proposed agreement, or if an Incentive Management fee may still also be paid.

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Table 3 depicts the comparative fiscal impact of the previous and proposed agreements.

Hotel Operator	Estimated Annual Gross Revenues	Estimated Annual Management Fee to be Paid to Hotel Operator	Estimated Annual Net Return to MDAD (net of operating expenses)
MCR Investors, LLC (previous)	\$14.5 M	\$362,500 (estimate based on 2.5% of \$14.5 M)	\$5.5 M
Driftwood Hospitality Management II, LLC (proposed)	\$12 M	\$420,000	\$4.9 M

The change to the compensation terms and estimated fiscal impact for the new agreement takes into account the current state of the hospitality and travel industry as impacted by the COVID-19 pandemic. Assuming these projections bear out, the loss of hotel revenues to MIA compared to the previous agreement is \$3,000,000 for the maximum contract term (five years). It is not specified in the mayoral memo whether the new compensation structure is for the duration of the agreement or only until the economy is expected to rebound.

At the time of the March 2018 management agreement, the 8th floor of the hotel was under design consideration for a business center and fitness center. It is not clear if the 8th floor renovation ever proceeded, or if management of these additional facilities are within the scope of this proposed agreement.

OCA performed a search pertaining to the Commodity Code 97160 (Property Management Services) in the Business Management Workforce System (BMWS) on October 9, 2020 and found no SBEs certified with this code. This contract, as the previous one, has a voluntary Airport Concession Disadvantaged Business Enterprise (ACDBE) Goal. Driftwood is utilizing Gilly Vending, Inc. at less than 1%. The voluntary ACDBE Goal under the previous contract was met by AWA Security, Inc. at 2% and Gilly Vending, Inc. at less than 1%. As with the previous agreement, Living Wages and Responsible Wages apply to the proposed agreement.

OCA initiated a due diligence review of the recommended vendor and its subcontractor on October 9, 2020; findings are summarized below in Table 4.

Awarded Firm(s)	Corporate Registration	Tax Collector's Office	Florida DBPR	Westlaw
Driftwood Hospitality Hotel	Foreign Limited Liability Company	No account on file. ³	No account on file.	No relevant cases.

³ Driftwood Acquisitions and Development, which is affiliated with Driftwood, has an LBT receipt for a location at 255 Alhambra Circle, Ste 750, Coral Gables, FL 33134.

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Management II, LLC	Active Principal Address: 11770 US Highway One, Ste. 202 North Palm Beach, FL 33408 Filed: February 1, 2010			
Gilly Vending, Inc. (subcontractor – certified ACDBE)	Florida Profit Corporation Active Principal Address: 90 NW 166 th St Miami, FL 33169 Filed: May 30, 1990	Business Address: 990 NW 166 St Miami Gardens, FL 33169 Account active; pending balance of \$1,892, \$942.15, and \$49.50 for various locations	No account on file.	No relevant cases.

Pursuant to Resolution No. R-130-06, adopted on January 24, 2006, items shall not be placed on a County Commission or committee agenda until the underlying contract is completely negotiated, in final form, and executed by all non-County parties and *attached to the agenda item* (emphasis added). It should be noted that, while the subject agreement has been executed by Driftwood, it is not attached to the agenda item.

ADDITIONAL INFORMATION

According to Driftwood's website and other sources, Driftwood is one of the largest hotel owner/operators nationwide. They currently manage over 70 hotels, comprised of over 13,000 rooms, 20 brands, and over 5,000 associates across the United States. Driftwood Acquisitions & Development, LP, an affiliate of Driftwood, is a privately held investment firm based in Coral Gables that acquires, develops, and manages hotel assets throughout the United States. They have completed the acquisition and development of over 100 hotels. Their combined portfolio is about \$3 billion.

<https://driftwoodhospitality.com/>

<https://www.dadlp.com/>

According to Airiodion Global Services (AGS), an entity that provides worldwide content, rankings, and independent reviews of top firms and practices across different industries and sectors, Driftwood is one of the top hotel management and consulting firms for 2020-2021. The listing is as follows:

- Aimbridge Hospitality
- AZUL Hospitality Group
- Charlestowne Hotels

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- Chesapeake Hospitality
- Driftwood Hospitality Management
- HMG Hospitality
- HP Hotels
- PM Hotel Group
- RAR Hospitality

<https://www.airiodion.com/hotel-management-consultants/>

As referenced in the mayoral memo, Mr. Carlos J. Rodriguez, Sr., CEO of Driftwood Acquisitions and Development (and a principal of Driftwood Hospitality Management), received a public Letter of Reprimand for a Cone of Silence violation from the Commission on Ethics (COE) related to the original RFQ (http://ethics.miamidade.gov/library/closed-complaints/2017/c_17-28_rodriguez.pdf). Mr. Rodriguez acknowledged he made a mistake, and on December 14, 2017, the COE accepted his plea of No Contest.

The hotel industry has seen a gradual uptick in occupancy rates in recent months, but occupancy rates continue to be at historic lows. For Driftwood and other operators, COVID-19 and the country's growing economic uncertainty have drastically impacted revenues. Mr. Rodriguez was recently quoted as stating, "We are losing money hand over first. We lost millions of dollars. We are in a position to withstand it, but it's a painful hit." He was referenced in another article as stating he is anticipating a return to 2019 hotel occupancy figures approximately two years from now, in the first quarter of 2022. It was reported in a different article that he agrees there is likely to be a cessation of most hotel renovation projects in South Florida; he anticipates it will take at least another six to 12 months before the projects are picked up once again. Mr. Rodriguez did note, however, that he expects some of the larger hotel investment groups, like his own, to actually begin renovation projects because of the pandemic. With the low occupancy rates, hotel owners may not get a chance like this again to make changes to the property without shutting down large portions of the hotel. <https://therealdeal.com/2020/06/12/submerged-in-securities-many-cmbs-hospitality-loans-may-be-underwater-soon/>
<https://www.bizjournals.com/southflorida/news/2020/04/21/how-long-hotel-renovations-could-be-on-hold.html>
<https://www.forbes.com/sites/forbesrealestatecouncil/2020/04/28/when-will-the-hotel-market-rebound-capital-strategies-for-todays-distressed-assets/#28e7f37d5c5d>

DEPARTMENTAL INPUT

OCA asked ISD the following questions on October 9, 2020; the responses are *italicized*.

1. The original award agenda item to MCR was 189 pages and included the management agreement and exhibits, while the subject item is just the award recommendation. Will the management agreement be supplemented to this item? Please provide a copy of the agreement. *Agreement attached.*
2. Were at least the third and fourth ranked firms contacted to determine if either of them had any interest in the contract, before a decision was made to negotiate with only the second ranked firm? *All ranked firms were contacted under RFQ No. MDAD-16-03 (Driftwood Hospitality Hotel Management II, LLC, Crescent Hotel Management Services LLC, Hostmark Hospitality Group and Yotel management Company Limited; all firms except Yotel [who never responded] expressed interest). The second highest ranked Proposer under the original RFQ was approached for negotiations.*
3. Has MDAD encountered performance issues with MCR; if so, please summarize the nature of those issues. When did the incumbent firm terminate for convenience and what was or will be the termination

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date? If the contract is already terminated, who is responsible for managing the hotel in the interim? *MCR's letter dated 5/29/2020 voluntarily terminated the Agreement effective 12/1/2020. Performance issues are primarily due to lack of reporting compliance in accordance with requirements of the Agreement:*

- 4.04 Monthly Financial Statement (submissions are incomplete)
- 4.06 Annual Audit ('17/18 & '18/'19 outstanding)
- 4.09 Forms of Reports (MCR and External Auditor have confirmed nonconformity)
- 5.01 Reimbursable Operating Expenses (numerous examples- unpaid foodservice bills)
- 5.02 Imprest Operating Account (not reconciled timely)
- 5.03 Imprest Payroll Account (not reconciled timely)
- 5.15 Special Request for Payment- Management Compensation (requirement for monthly submission)
- 6.01 Base Management Fee (not paid in accordance with sub-article 4.04) 9) 6.02 Incentive Management Fee (paid for superior performance)

4. Is the revised compensation structure due to COVID-19 only for a limited period of time, or for the duration of the contract? *The revised compensation structure is for the duration of the contract.*
5. Why was the original contract awarded for up to 10 years, and this contract is for a term up to five years? *The term is in line with the approximate time remaining in the initial term of the original contract awarded to MCR.*
6. What is the yearly gross revenues and net income to MDAD since the inception of the contract in March 2018, including revenues to date for 2020? *2018 is a partial year (April to September 2018): \$3,370,583 Sales, \$1,454,008 Net Income; 2019 is \$12,365,562 Sales, \$5,054,008 Net Income; and 2020 October-August 2020 is \$7,474,114 Sales, \$2,073,467 Net Income (As a result of Covid19).*

APPLICABLE LEGISLATION/POLICY

Section 2-8.1 of the County Code (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by I.O. and approved by the Board.

https://library.municode.com/fl/miami-dade-county/codes/code-of-ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.1(b)(3) of the County Code prescribes that formal sealed bids for purchase of goods or services shall not be required where such formal sealed bids would not be practicable.

https://library.municode.com/fl/miami-dade-county/codes/code-of-ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.9 of the Code of Miami-Dade County (Living Wage Ordinance for County Service Contracts and County Employees) applies to Covered employees, meaning anyone employed by any Service Contractor, as further defined in this Chapter either full or part time, as an employee with or without benefits that is involved in providing service pursuant to the Service Contractor's contract with the County.

https://library.municode.com/fl/miami-dade-county/codes/code-of-ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

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Item No. 3C

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[dade county/codes/code of ordinances?nodeId=PTIIICOR CH2AD ARTIINGE S2-8.9LIWAORCOSECOEM](http://www.miamidade.gov/codes/code_of_ordinances?nodeId=PTIIICOR_CH2AD_ARTIINGE_S2-8.9LIWAORCOSECOEM)

Resolution No. R-130-06, adopted on January 24, 2006, clarified that proposed agenda items seeking approval of a contract or conveyance and authority to execute same shall not be placed on any committee or commission agenda unless the underlying contract or conveyance is completely negotiated, in final form, and executed by all non-County parties.

<http://www.miamidade.gov/govaction/matter.asp?matter=060239&file=false&fileAnalysis=false&yearFolder=Y2006>

Resolution No. R-187-12, adopted on February 21, 2012, directed the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://www.miamidade.gov/govaction/matter.asp?matter=120287&file=true&fileAnalysis=false&yearFolder=Y2012>

Resolution No. R-1011-15, adopted on November 13, 2015, requires that all vendors bidding on and/or entering into contracts with Miami-Dade County to provide addresses of all local branch offices and headquarters and the number and percentage of local residents employed; directing the Mayor to include such information in award recommendations to the Board.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2015/152271min.pdf>

Resolution No. R-202-18, adopted on March 6, 2018, approved award of a Management Agreement to MCR Investors LLC for the operation of the MIA Hotel and Related Amenities at Miami International Airport for a term of seven years with a three-year option to review, and for payment of a base management fee of 2.5% of net sales and incentive management fee of 2.2% of net operating income.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180448min.pdf>

Implementing Order 3-38 sets forth the County's policies and procedures for the procurement of goods and services. The I.O. references the obligations and responsibilities of the Internal Services Department; the authority to award; and the requirements for access contracts, emergency purchases, bid waivers, confirmation purchases and sole sources.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-38.pdf>

**TAPS Meeting:
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**Item No. 3D
File No. 201991**

Researcher: MF Reviewer: PGE

RESOLUTION AUTHORIZING ADDITIONAL EXPENDITURE AUTHORITY IN AN AMOUNT UP TO \$607,900.00 FOR A MODIFIED TOTAL CONTRACT AWARD OF \$10,475,500.00 FOR CONTRACT NO. FB-00123 GROUP 1 (PREVENTIVE MAINTENANCE) FOR A/C CHILLERS, AUXILIARY EQUIPMENT, WATER TREATMENT FULL SERVICE CONTRACT FOR THE MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY EXTENSION OR CANCELLATION, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

ISSUE/REQUESTED ACTION

Whether the Board should approve additional expenditure of \$607,900 under *Contract No. FB-00123 – Group 1 Preventive Maintenance* for the continued purchase of maintenance services for air conditioning chillers, auxiliary equipment, and water treatment for the Miami-Dade Aviation Department (MDAD), resulting in a total modified contract value of \$10,475,500.

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Internal Services Department

There is no procedural history for this item currently.

ANALYSIS

The purpose of this item is for the County to authorize additional expenditure to Group 1-Preventive Maintenance of *Contract No. FB-00123* for the purchase of A/C chillers, Auxiliary Equipment, and Water Treatment Full Service for MDAD facilities, with a fiscal impact to the County of \$607,900 – bringing the total award under this contract to \$10,475,500.

The justification provided by MDAD to ISD for this modification request is summarized as follows: Miami Dade Aviation Department (Aviation) is requesting a modification to increase the spending authority under this Contract, in order to continue full-service maintenance on all water chillers, water treatment, cooling towers, air compressors, pumps, variable frequency drives, associated piping and structural components. In accordance with Section 3.2, Quality Assurance, the awarded vendors were given 60 days to inspect equipment and report back Aviation any deficiencies found and make the necessary repairs to bring equipment up to satisfactory and safe operating conditions in accordance with original specifications. Upon initial inspection, a large number of preexisting condition repairs were necessary to bring equipment not covered on previous contracts to OEM standards. Cost to bring equipment to OEM standards was approximately \$1,000,000.00. This additional cost was due to an increase in equipment and services not covered under the previous chiller contract. All pre-existing condition repairs have been completed. In addition, replacement of chillers, replacement of water treatment equipment, replacement of valves and piping at Bldg. 2208 and 3090, and Hurricane Irma damages have impacted Aviation's expenses, under this Contract. These expenses have totaled \$870,000.00. The current allocation on this contract is only to cover the yearly, quarterly, and monthly services. There is one prior modification request of \$1,644,600 submitted recently, under the Mayor's delegated authority (20%). This second modification in the amount of \$607,900 will go to the BCC for approval.

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The difference between AC chillers and AC units is that a chiller utilizes an absorption refrigeration cycle to remove heat from an area by taking hot water, cooling it down in its liquid form and then the chilled water circulates throughout. An AC unit, on the other hand, can cool down as well as heat a room; to cool a room, AC units take the hot air and cool it down by removing the heat and delivering cold air.¹

The Board approved award of *Contract No. FB-00123* in the amount of \$8,223,000 on March 3, 2015, pursuant to Resolution No. R-207-15, for a six-year term expiring March 31, 2021. The contract established two groups: *Group 1-Full-Service Maintenance, and Group 2-Prequalification Pool of Bidders for Purchase, Replacement and Installation of Capital Equipment (closed pool)*. Subsequently, the contract has been modified as permissible through the mayor's delegated authority. OCA reviewed BTS on October 14, 2020 and shows an allocation amount of \$9,867,600 and a released amount of \$2,184,817.87, leaving a balance of \$7,682,782.13. The requested additional expenditure amount of \$607,900 will bring the total modified cumulative allocation to \$10,475,500.

Table 1 below depicts the contract's allocations including approved modifications as per BTS.

Contract No. FB-00123	
Current Contract Amount	\$9,867,600
Contract Total When Last Approved by Board	\$8,223,000
All Modifications Since Last Board Approval	\$1,644,600
Requested Modification Amount Under this Item	\$607,900
Modified Cumulative Allocation	\$10,475,500
	 $\$9,867,600 + \$607,900 = \$10,475,500$

OCA reviewed the Bid Tracking System on October 9, 2020 pertaining the subject contract. The search yielded an email communication dated June 5, 2020 from MDAD staff directed to ISD noting profound concerns that MDAD was in jeopardy of having services terminated due to unpaid invoices. The email referred to a contract modification requested by MDAD on October 2019 – that as of nine months later (June 5, 2020) ISD had not granted. In part, the email stated MDAD had depleted its allocation (for the full-service contract) and owed the vendor – identified as Johnson Controls Inc.² – \$437,000 in past due invoices – and that a payment of \$167,695 was looming on June 28, 2020. The correspondence also stated the vendor's attorney had issued a demand letter to the County in May 2020, pertaining a past due payment of \$65,557 – which MDAD paid, thereby leading to the allocation being depleted.

OCA conducted a search for the BTS-listed Commodity Codes 03113 (Chillers, Heat Exchangers and Receivers), 90644 (Heating, Ventilating AC Services), 91036 (Heating, AC and Ventilation), 96223 (Chemical Treatment Services of Boiler and Tower) on the Business Management Workforce System's Certified Vendor Directory on October 9, 2020. There were numerous local SBE's identified; listed below are a few of those.

¹ Home Air Advisor, <https://homeairadvisor.com/chiller-vs-air-conditioner/>

² Phone conversation with MDAD staff on October 14, 2020.

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- 24-Hour Air Service Inc. Miami, FL SBE-G&S
- Air at Your Door Inc. Miami, FL SBE-G&S
- Air Connection Mechanical LLC Homestead, FL SBE-G&S
- Air Contracting & Refrigeration Inc. Miami, FL SBE-G&S
- Air Efficiency Corp. dba Duct Design Central Florida Hialeah, FL SBE-G&S
- Air Logic Services Miami, FL SBE-G&S
- Air Zone, Inc. Homestead, FL SBE-G&S
- Airmax Service Corporation South Miami, FL SBE-G&S
- Alexander Air & Heating Inc. Miami, FL SBE-G&S
- Always Winter Air Conditioning & Refrigeration Miami, FL SBE-G&S
- AM Florida Builders Corp. Doral, FL SBE-G&S
- American Builders Masters Corp. dba American Cooling Masters Corp. Miami, FL SBE-G&S
- Apex-Tech Electrical and Air Conditioning Inc. North Miami, FL SBE-G&S
- Atlantik Mechanical Inc. Hialeah, FL SBE-G&S
- B & K Contractor Services Inc. Miami Gardens, FL SBE-G&S
- BecQtech Construction Enterprises Miami, FL SBE-G&S
- Blizzard Air Conditioning LLC Miami, FL SBE-G&S
- Brophy Associates, Inc. dba Direct Digital Concepts Miami, FL SBE-G&S

Whether these vendors have the capacity to participate in any aspect of the contract's scope of services is beyond the scope of this research note.

OCA performed due diligence on October 9, 2020 pertaining the awarded vendors under Group1 – which are the subject of this request – as well as the existing closed prequalification pool of vendors (under Group 2) that were part of the original contract; below are the findings.

Group No.	Awarded Firm	Corporate Registration	Tax Collector's Office	Florida DBPR	Westlaw
1 and 2	Johnson Controls, Inc.	Foreign Profit Corporation Active Principal Address: 5757 N. Green Bay Ave. Milwaukee, WI Filed: November 7, 1957	No account on file	No account on file	No relevant litigation found

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Group No.	Awarded Firm	Corporate Registration	Tax Collector's Office	Florida DBPR	Westlaw
1 and 2	RGEN Enterprises, LLC dba Cool Water Air Conditioning	Florida Limited Liability Company Active Principal Address: 5716 NE 4th Ave Miami, FL Filed: April 23, 2018	Business Address: 5716 NE 4th Ave. Miami, FL Paid and Current	Active Licensed for: Certified Mechanical Contractor; Construction Business Information; Construction Financial Officer	No litigation found
1 and 2	Southeastern Chiller of Miami, Inc. dba Southeastern Chiller Services	Florida Profit Corporation Active 3800 NW 126 Ave. Coral Springs, FL 33065 Filed: October 1, 1993	No account on file	Active Licensed for: Construction Business Information	No relevant litigation
1 and 2	Weathertrol Maintenance Corp.	Florida Profit Corporation Active Principal Address: 7250 NE 4 Ave. Miami, FL Filed: April 10, 1969	Principal Address: 7250 NE 4 Ave. Miami, FL Paid and Current	Active Licensed for: Certified Mechanical Contractor; Construction Business Information	No relevant litigation
2	Cool-Breeze Air Conditioning Corporation	Florida Profit Corporation Active Principal Address: 13120 SW 130 Terr. Miami, FL Filed: September 14, 1987	No account on file	Active Licensed for: Certified Air Conditioning Contractor	No relevant litigation

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Group No.	Awarded Firm	Corporate Registration	Tax Collector's Office	Florida DBPR	Westlaw
2	Honeywell International, Inc.	Foreign Profit Corporation Active Principal Address: 300 S. Tryon St. Charlotte, NC Filed: October 6, 1986	No account on file	Active Licensed for: Construction Course Provider; Certified Alarm System Contractor; Certified Mechanical Contractor; Certified Alarm System Contractor I; Healthcare Clinic Establishment Permit; Construction Business Information; Electrical Business Information; Registry	No relevant litigation
2	Trane U.S., Inc. dba Trane	Foreign Profit Corporation Active Principal Address: 800 E. Beaty St. Davidson, NC Filed: January 7, 1952	No account on file	No account on file	<i>Cruz et al. v. Trane Inc., et al.</i> Case No. 3:19-CV-07324, filed February 28, 2019 in the U.S. District Court, District of New Jersey (Trenton). Allegation: During a April 2018, the defendant engaged in racist actions (toward plaintiffs) through the use

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of racial slurs in the presence of several male and female African-American workers to which when the employees complained to HR, they received unlawful reprisals. Case status: A fact discovery deadline has been extended to October 30, 2020 – for which a telephone status call has been scheduled on that day.

Illustration 1 below shows an example of a Chiller AC system.

Illustration 1



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ADDITIONAL INFORMATION

OCA conducted Internet searches on the selected vendors on October 10, 2020. Below is a snapshot of information from each of the vendor's websites.

- Johnson Controls, Inc. – among the goods and services the company offers are HVAC equipment, fire detection and suppression, operations and maintenance repair services, and systems integration. <https://www.johnsoncontrols.com/>
- RGEN Enterprises, LLC dba Cool Water Air Conditioning – the company's clients include Miami VA Hospital; Brickell Bay Club; The Hebrew Academy; The Seasons (Fort Lauderdale); Majestic Tower Bal Harbour; and Miami-Dade County School Board. <http://www.coolwaterac.com/>
- Southeastern Chiller of Miami, Inc. dba Southeastern Chiller Services – the company opened 27 years ago and provides AC maintenance and repair and equipment replacement services for large commercial and industrial customers. <https://sechillers.com/>
- Weathertrol Maintenance Corp. – the company was established more than 50 years ago as a family-owned business with expertise in the design, construction, maintenance and operation of HVAC systems for large, industrial and government buildings. <https://wtrol.com/>
- Cool-Breeze Air Conditioning Corporation – established more than 30 years ago, the company offers cooling and heating services with 24/7 availability. <https://www.cool-breezeac.com/>
- Honeywell International, Inc. – established more than 100 years ago, the company offers multi-faceted services in the areas of healthcare pharma, industrial and manufacturing, retail, safety, buildings and cities, and aerospace. <https://www.honeywell.com/en-us>
- Trane U.S., Inc. dba Trane – the company bills itself as a world leader in air conditioning systems, services and solution, offering energy-efficient heating, ventilating and AC systems, building, contracting and energy services, in addition to support services. <https://www.trane.com/index.html>

DEPARTMENTAL INPUT

OCA sent the following inquiries to ISD on October 14, 2020; as of publication of this research note, no responses had been provided.

- *Contract FB-00123* expires March 31, 2021, which is less than six months away. Kindly provide the status the long term re-procurement plan for this.
- Please provide explanation for the delay from the time MDAD requested a contract modification in October 2019 to when ISD granted said modification in June 2020 (as noted in an email communication from MDAD to ISD dated June 5, 2020).

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APPLICABLE LEGISLATION/POLICY

Section 2-8.1 of the Code of Miami-Dade County (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000.00; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by Implementing Order (I.O.) and approved by the Board.

[https://library.municode.com/fl/miami -
dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE](https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE)

Resolution No. R-828-19, adopted on July 23, 2019, established a County policy for disclosure of past and present discrimination lawsuits in solicitation submissions; requiring the following: 1) implementing a policy of disclosure of discrimination lawsuits; 2) requiring in competitive and non-competitive solicitation documents the disclosure of lawsuits that include allegations of discrimination and dispositions of such lawsuits for a 10-year period through the date of the solicitation or non-competitive award recommendation; and 3) provide a report to the Board.

<http://www.miamidade.gov/govaction/matter.asp?matter=190936&file=true&fileAnalysis=false&yearFolder=Y2019>

Resolution No. R-477-18, adopted on May 1, 2018, directs the County Mayor to disclose to the Board the reasons why goods and services are not being procured through local businesses when the recommendation is to award a contract to a non-local vendor or to establish a prequalification pool where less than 75 percent of the pool members are local businesses.

<http://intra/gia/matter.asp?matter=180822&file=true&yearFolder=Y2018>

Resolution 1011-15, adopted November 3, 2015, directs the County Mayor or designee to require that vendors provide addresses of all local branch offices and headquarters and the number and percentage of local residents such vendors employ.

<http://intra/gia/matter.asp?matter=152271&file=true&yearFolder=Y2015>

Resolution No. R-207-15, adopted January 28, 2015, approved award of Contract No. FB-00123 for purchase of A/C chillers, auxiliary equipment and water treatment services in the total amount not to exceed \$8,223,000 for MDAD.

<http://intra/gia/matter.asp?matter=150201&file=true&yearFolder=Y2015>

Resolution No. R-187-12, adopted on February 21, 2012, directs the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://intra/gia/legistarfiles/MinMatters/Y2012/120287min.pdf>

Resolution No. R-716-12, adopted on September 4, 2012, requires identification of a firm's Small Business Enterprise (SBE) program certification in any procurement item submitted for Board approval.

<http://intra/gia/matter.asp?matter=121265&file=true&yearFolder=Y2012>

Implementing Order No. 3-38 sets forth the County's processes and procedures for the purchase of goods and services. The I.O. outlines: the roles and responsibilities of the Internal Services Department (ISD); the methods of

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purchasing goods and services; the authority to award and modify contracts; and the requirements for access contracts, emergency purchases, bid waivers, confirmation purchases and sole sources.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-38.pdf>

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**Item No. 3E
File No. 201966**

Researcher: MF Reviewer: PGE

RESOLUTION AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A STANDARD FORM SEAPORT LEASE AGREEMENT BETWEEN ELLER-ITO STEVEDORING COMPANY, LLC AND MIAMI-DADE COUNTY AS MODIFIED TO EXTEND LEASE TERM BEYOND FIVE YEARS AND AUTHORIZE PROVISION OF FUTURE GROUND RENT CREDITS NOT TO EXCEED \$261,896.74 IN CONSIDERATION FOR CERTAIN LEASEHOLD IMPROVEMENT COSTS PREVIOUSLY INCURRED BY TENANT; TO EXERCISE ALL RENEWAL, TERMINATION, AND OTHER RIGHTS CONFERRED THEREIN; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF THE LEASE AGREEMENT TO THE PROPERTY APPRAISER'S OFFICE WITHIN 30 DAYS OF THE AGREEMENT'S EXECUTION

ISSUE/REQUESTED ACTION

Whether the Board should approve executing a standard form open ground lease agreement between Eller-ITO Stevedoring Company, LLC and the County to extend the lease term beyond five years, authorizing a five year initial term plus five one-year optional renewal terms, including future rent credits not to exceed \$261,896.74, for PortMiami.

PROCEDURAL HISTORY

**Prime Sponsor: Commission Vice-Chair Rebeca Sosa, District 6
Department/Requester: PortMiami**

There is no procedural history for this item currently.

ANALYSIS

The purpose of this item is for the Board to approve a lease agreement for future ground rent credits between the County and a long-time Seaport tenant, with a fiscal impact of \$261,896.74 for a five-year term. The lease agreement would allow Eller-ITO Stevedoring Company, LLC ("Eller-ITO") to continue to perform stevedoring maintenance and repair functions at PortMiami – where the company has engaged in such work for the past 20 years. Up until December 2019, Eller-ITO had a two-year lease agreement consisting of approximately 1.6 acres of ground land at PortMiami, at which the company conducted its equipment maintenance and repair operations and had performed onsite improvements to the parcel. Stevedoring work generally consists of handling port cargo, including using machinery and gear, and involves loading and unloading ships at docks, as well as the transfer of cargo to and from storage areas such as trucks and barges.¹ Currently, PortMiami does not have a permanent facility for stevedoring maintenance and repair activities, although it is part of the Seaport's long-range master planning duties.

Eller-ITO initially intended to renew and extend its lease term with PortMiami on the aforementioned 1.6-acre parcel, as the property was part of the Port's capital improvement projects designated toward a new Cruise Terminal B – along with roadway infrastructure work – to make way for the MSC and Disney cruises terminals. As such, in trying to continue to conduct its work at PortMiami, Eller-ITO then decided to reposition its operations onto a 1.87-acre area on the Port of Miami Terminal Operating Company's (POMTOC) Terminal Area.

¹ Study.com,
https://study.com/articles/Stevedore_Job_Description_and_Information_About_Becoming_a_Stevedore.html.

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Researcher: MF Reviewer: PGE

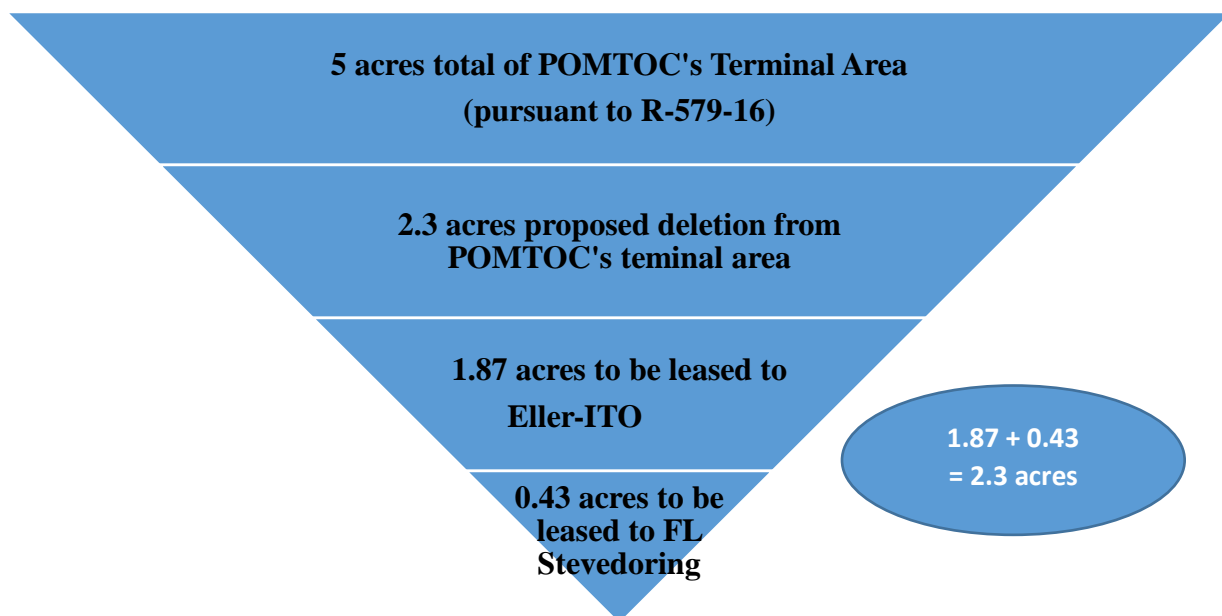
The fiscal impact of \$261,896.74 is a result of two key features pertaining to Eller-ITO's operations at PortMiami: 1) the allocation would serve for future ground rent credits toward the company's estimated \$537,000 lease for a five-year term; and 2) would partially compensate for some of the approximately \$487,000 in infrastructure upgrades the company completed on the previous Port site.

Seaport staff determined (after a review of invoices) that the subject amount of \$261,896.74 is related to direct essential infrastructure upgrades performed by Eller-ITO that benefited PortMiami's entire operation. Said improvements consisted of a permanent feeder, extending 850 feet beyond the 1.87-acre land, vital to power usage along associated meters, cables and panels.

Approval of this item would serve as a modification to the POMTOC Agreement (known as the First Amendment), approved in July 2016 and pursuant to Resolution No. R-579-16, which provided for, among other things: a replacement to the terminal operating footprint; relocation of the existing access road; relocation of Chute Road; construction of drainage facilities; bringing parity of electrical surcharges and gantry crane escalators; and cleaning up contractual items.

Per the 2016 resolution, the Port carried out a maximum parcel adjustment of five acres to the Terminal Area in an effort to enhance operations at PortMiami. Under this item, the Board would allow the previously approved five acres to be reduced by 2.3 acres from POMTOC's terminal area and consent to a parcel reconfiguration for said space to be utilized by Eller-ITO in the maintenance and repair of heavy equipment. Figure 1 below shows the proposed acreage breakdown under this item.

Figure 1



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Per the mayoral memo, both Eller-ITO and Florida Stevedoring had to relocate their stevedoring operations to areas within POMTOC's terminal; however, a formal lease agreement cannot be completed until the Board authorizes the removal of said parcels totaling 2.3 acres (as previously noted: 1.87 acres + 0.43 acres = 2.3 acres) from POMTOC's amended and executed terminal operating agreement approved in December 2013 and pursuant to Resolution No. 1051-13.

As part of this item, stevedoring company Eller-ITO will enter into a lease agreement with the County for the purpose of conducting business activities related to operations with waterborne commerce and transportation. Annual rent for the lease will total \$149,687.96 with an initial five-year term and five one-year options to renew. For this item, rent will be credit at up to 50% per month, excepting state sales tax on full rental amounts that may otherwise be due, until the total amount of extended credits reaches a maximum amount not to exceed \$261,896.74 – the requested amount under this item. Table 1 below depicts the square footage, price rate, as well as the monthly and annual fees and requested partial rent credits for property located at 1976 Antarctica Way.

Table 1

Lease Agreement between Eller-ITO and the County			
Sq. Ft.	Sq. Ft. Price Rate	Monthly Fee	Annual Fee
81,352.15	\$1.84	\$12,474	\$149,687.96
		+ \$13,284.81 (sales tax)	
		50% monthly credit = \$6,237 (excluding sales tax) for a period of nearly three years and 6 months \$6,237 * 42 months (3 yrs. 6 mos.) = \$261,954	

Note: The rental rate shown is exclusive of the following utility costs: electric, water and sewer, maintenance, and janitorial services. The Seaport does provide sweeper services as extra fees that are charged to the lessee at hourly rates.

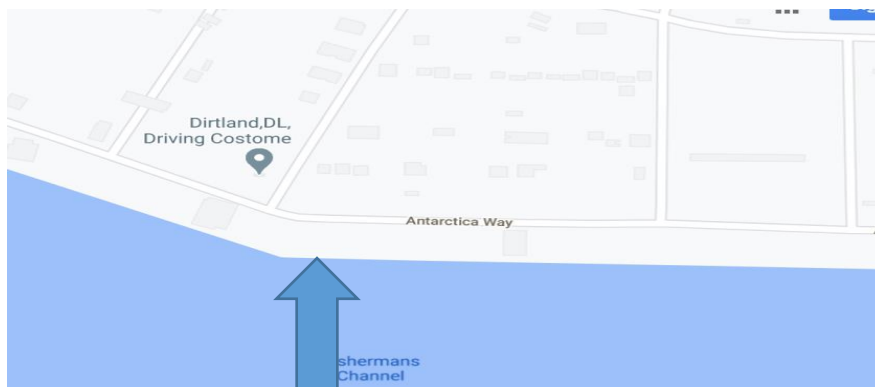
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Map 1 below shows the vicinity of the subject property to be leased located at 1976 Antarctica Way.

Map 1



OCA consulted the Occupational Safety and Health Administration's (OSHA) website on October 7, 2020 to review the safety records of Eller-Ito Stevedoring Company, LLC. The search yielded a 2019 case involving two violations deemed "serious"; the case was closed and settled in March 2020.² According to the available information in the OSHA portal, the initial penalty incurred was for \$13,494, which ultimately was lowered and settled in the amount of \$8,096. OCA reached out to the OSHA Fort Lauderdale region office (upon referral from the U.S. Department of Labor in Washington, D.C.) on October 7, 2020 for additional information pertaining the context of said violations; however, no one was available.

OCA performed due diligence pertaining the subject company October 14, 2020; below are the findings.

Awarded Firm	Corporate Registration	Tax Collector's Office	Florida DBPR	Westlaw
Eller-ITO Stevedoring Company, LLC	Foreign Limited Liability Company Active Principal Address: 1007 North America Way, #501 Miami, FL	Paid 2019; no listed information on 2020 Business Address: 1007 North America Way, #501 Miami, FL	No account on file	<i>Darcia Musgrove v. Belearia Caribbean LTD, Corp. et al.</i> Case No. 0:18-CV-62678 filed November 2, 2018 in the 17 th Judicial Court of Broward County; the case was later moved to the U.S. District

² OSHA, https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1432247.015

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Researcher: MF Reviewer: PGE

Filed: June 18, 1998

Court, Southern District of Florida (Ft. Lauderdale). The [Case No. under the 17th Judicial District: CACE-18-022140].
Allegation:
A wrongful death lawsuit alleging defendants failed to properly operate and maintain the door of terminal of their cruise ship in Port Everglades, Fort Lauderdale in a reasonably safe condition, resulting in the untimely death of plaintiff's decedent when she fell and suffered bodily injury. Case status: A settlement agreement was reached February 28, 2020, of which the monetary details are not provided in the settlement.

ADDITIONAL INFORMATION

OCA performed an Internet search of Eller-Ito Stevedoring Company, LLC. According to its website, the company is considered the largest stevedore container handling equipment pool in South Florida, allowing for the service to cruise, container, freight handling, and bulk/special cargo.

<http://www.ellerito.com/>

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Illustration 1 below shows the company's location at PortMiami.

Illustration 1

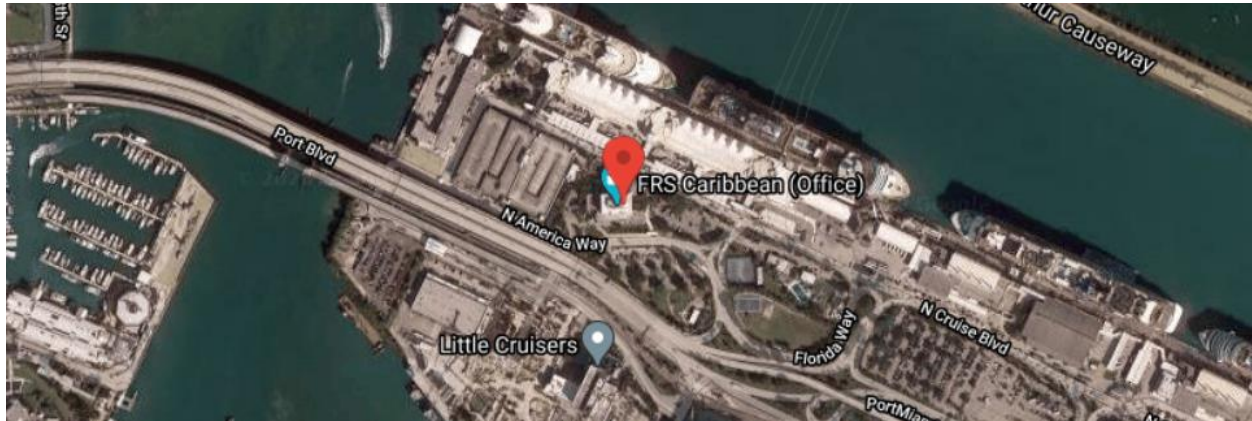


Illustration 2 below shows the PortMiami cargo terminal.

Illustration 2



Source: PortMiami

APPLICABLE LEGISLATION/POLICY

Section 2-8.3 of the Miami-Dade County Code (Manager's Recommendation) Whenever a competitive process is utilized for selection of a contractor, vendor, consultant, tenant or concessionaire, the County Manager shall review the responses to the solicitation and recommend to the County Commission award or other appropriate action. Such recommendation shall be in writing and shall be filed with the Clerk of the Board, with copies mailed to all participants in the competitive process, no later than ten (10) days prior to any Commission meeting at which such recommendation is scheduled to be presented. Such recommendation shall be accompanied by a memorandum from the County Manager that clearly identifies any and all delegations of Board authority contained in the body of the proposed contract. Those contracts covered by Section 2-8.2.7 for which no timely protest is filed, the County Manager's recommendation may be awarded by the County Manager in accordance with his recommendation. The Commission, by two-thirds vote of the members present, may waive the requirements of this section. The foregoing notwithstanding, the requirements of

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this section shall not apply to contracts or purchases which the County Manager has the delegated authority to award under Section 2-8.1(b) of this Code.

[https://library.municode.com/fl/miami -
dade county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.3MARE](https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.3MARE)

Resolution No. R-828-19, adopted July 23, 2019, establishes a policy of the County for disclosure of past and present discrimination lawsuits in solicitation submissions.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2019/190936min.pdf>

Resolution No. R-579-16, adopted July 6, 2016, approved and authorized the County Mayor or designee to execute Amendment No. 1 to the amended and restated Terminal Operating Agreement between the County and Port of Miami Terminal Operating Company, LC, providing for among other things, a replacement to the terminal operating footprint, relocation of the existing access road, relocation of Chute Road, construction of drainage facilities, bringing parity of electrical surcharges and Gantry Crane Escalators, and cleaning up contractual items for an estimated increase costs to the county of approximately \$1,700,000 and delegating authority to the Port Director to approve in writing future subleases of portions of the terminal area by operator to other on-port terminal operators or tenants, and subleases of portions of other port property by operator, provided, however, such subleases I) do not exceed two years in duration, II) do not involve more than five acres of Port land per sublease nor more than 10 acres, in aggregate, and III) are deemed necessary by the Port Director (in writing) to accommodate the construction and/or operating requirements of proposed new cruise Terminal "A."

<http://intra/gia/matter.asp?matter=161414&file=true&yearFolder=Y2016>

Resolution No. 1051-13, adopted December 17, 2013, authorized the County mayor or designee to execute 1) Amendment No. 2 to the Terminal Operating Agreement Between the County and Port of Miami Terminal Operating Company, LC; and 2) the restated terminal operating agreement between the County and Port of Miami Terminal Operating Company, LC.

<http://www.miamidade.gov/govaction/matter.asp?matter=132469&file=true&fileAnalysis=false&yearFolder=Y2013>

Resolution No. R-777-03, adopted July 8, 2003, authorize the county manager to execute standard form lease agreements not to exceed a term of five year for space at the Dante B. Fascell Port of Miami-Dade; and to exercise all rights conferred therein.

<http://intra/gia/matter.asp?matter=031556&file=true&yearFolder=Y2003>

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File No. 201963**

Researcher: TA Reviewer: PGE

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AMENDMENTS TO (1) PREFERENTIAL BERTHING RIGHTS AGREEMENTS AND CRUISE TERMINAL USAGE AGREEMENTS PROVIDING FOR A TWO-PHASE CORONAVIRUS DISEASE 2019 (COVID-19) RECOVERY PERIOD AND (2) THE GROUND LEASE WITH MIAMI CRUISE TERMINAL A, L.L.C. AND ITS PERMITTED ASSIGNEE (MCTA GROUND LEASE); PROVIDING THAT SUCH AMENDMENTS HAVE AN ESTIMATED FISCAL IMPACT OF \$68,500,000.00 FOR THE FIRST PHASE OF THE COVID-19 RECOVERY PERIOD, INCREASING AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH UNTIL THE COMMENCEMENT OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD, AND THEN AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH, SUBJECT TO REDUCTION BASED ON THE DURATION OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD AND PASSENGER VOLUMES; PROVIDING THAT ANY AMENDMENTS SHALL BE SUBJECT TO ANY PRIOR REVIEWS AND SATISFACTION OF ANY PRE-CONDITIONS REQUIRED UNDER THE SEAPORT BOND ORDINANCE, ORDINANCE NO. 88-66, AS AMENDED, AND OTHER SEAPORT-RELATED COUNTY DEBT FACILITIES AND SHALL PROVIDE FOR THE IMPLEMENTATION OF ANY REQUIREMENTS OR RECOMMENDATIONS OF THE CONSULTING ENGINEERS UNDER THE SEAPORT BOND ORDINANCE; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF ANY AMENDMENT TO THE MCTA GROUND LEASE TO THE PROPERTY APPRAISER'S OFFICE IN ACCORDANCE WITH RESOLUTION NO. R-791-14; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PERFORM ALL ACTS AND EXECUTE ANY DOCUMENTS AS MAY BE REQUIRED TO GIVE EFFECT TO THE INTENT OF THIS RESOLUTION AND ANY AMENDMENTS NEGOTIATED AND EXECUTED AS PROVIDED HEREIN; AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06

ISSUE/REQUESTED ACTION

Whether the Board should authorize the Mayor to negotiate and execute amendments to (1) preferential berthing rights and terminal usage agreements with cruise lines that have such agreements at PortMiami and (2) the ground lease with Miami Cruise Terminal A, LLC (MCTA), an affiliate of Royal Caribbean International, to address Fiscal Year 2019-20 obligations and to establish a COVID-19 Recovery Period.

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Rebeca Sosa, representing Commission District 6
Department/Requester: PortMiami

This item has no procedural history.

ANALYSIS

The purpose of this item is to authorize the Mayor or his/her designee to negotiate and execute the following:

- 1) Amendments to berthing rights agreements and cruise terminal usage agreements, providing for a two-phase COVID-19 Recovery Period; and
- 2) Amendments to the Ground Lease Agreement with Miami Cruise Terminal A, LLC (MCTA) and its permitted assignee Sumitomo Mitsui Banking Corporation Lease and Finance (SMBE-LF) with respect to Cruise Terminal A, providing for a two-phase COVID-19 Recovery Period.

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The amendments will be substantially in the form described in the mayoral memo, as the negotiated agreements are not attached as part of the item. To ensure the execution of the amended agreements can be expedited, this item also requests a waiver of Resolution No. R-130-06, which requires the completion of negotiations and execution by non-County parties prior to presentation to the Board. The amended agreements do not have to return to the Board for approval, but the amendments must satisfy any pre-conditions and covenants required under the Seaport Bond Ordinance and other Seaport-related County debt facilities. In addition, any such amendments must incorporate any requirements or recommendations of the Consulting Engineers under the Seaport Bond Ordinance.

PortMiami has proposed the concept of a “COVID-19 Recovery Period” to provide for a two-phase approach to supporting the cruise industry as they resume operations and return to normalized cruise passenger volumes. The proposed relief framework is summarized in Table 1 below:

COVID-19 Recovery Period	Time Frame	Industry Support	Fiscal Impact
Phase 1	<p>March 13, 2020 through a period that ends the earlier of:</p> <ul style="list-style-type: none"> 60 days from the lifting of the No Sail Order in its current form (unless passenger cruise operations in U.S. waters for said line being sooner); or July 1, 2021 	<p>Waiver of lay berth and harbor fees for vessels with no passenger movement until September 30, 2020.</p> <p>Excusal from minimum annual guarantee obligations</p> <p>Not required to use their accumulated surplus credits to cover any shortfalls</p>	<p>\$55M revenue loss, including projected revenues from cruise associated activities such as parking and transportation fees, through the end of Fiscal Year 2019-2020</p> <p>\$13.5M revenue loss for the balance of the Phase 1 Recovery period</p> <p>For every month the No Sail Order extends beyond September 30, 2020, the revenue loss increases by \$7M per month</p>
Phase 2	Commences immediately upon the conclusion of Phase 1 (no later than July 1, 2021) and lasts up to 24 months.	<p>Excusal from minimum annual guarantee obligations, subject to certain conditions</p> <p>Not required to use their accumulated surplus credits to cover any shortfalls; nor shall any credits accrue</p>	<p>\$7M revenue loss and \$1M in ancillary cruise-related revenues, in the event that no cruises sail during the entire Phase 2 Recovery Period.</p>

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		Cruise lines will be required to pay dockage and wharfage fees Parking-based incentives will be waived	Assuming cruise lines resume sailing as soon as permitted, cruise lines will be required to compensate the County based on their actual usage of the Port.
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The mayoral memo details the offset of the above \$55M fiscal impact of Phase 1. It is summarized as follows in Table 2 below:

Action	Savings
Hiring freeze and elimination of overtime	\$8,000,000
Deferral of sponsorships, advertising, memberships, terminal activities and other marketing efforts	\$5,000,000
Reduction in business travel, promotions, and other administrative expenses	\$5,000,000
Sunsetting of cargo incentive program (elimination of rebates)	\$6,000,000
Reduction in volume-based cruise incentives	\$4,000,000
Savings on interest expenses on variable rate debt	\$7,000,000
Budgeted surplus for Fiscal Year 2019-2020	\$10,000,000
Port's Unrestricted Reserve	\$10,000,000
Total Savings	\$55,000,000

To offset the balance of revenue losses for Phase 1, approximately \$32,000,000 in non-revenue generating capital improvement projects has been deferred. Additional savings measures in Fiscal Year 2020-2021 include negotiating scope reductions to existing capital improvement projects, reducing reliance on outside consultants, and developing new sources of revenue.

With respect to amendments to the MCTA operating agreement, the ground rent payment to the County for Cruise Terminal A (CT-A) will be pro-rated to reflect the Recovery Period time frames and requirements. The Mayor or his/her designee may also negotiate additional conditions for the benefit of the County as part of the amended lease.

The mayoral memo indicates that the Port remains financially strong heading into Fiscal Year 2020-2021 with \$114 million in unrestricted reserves and can meet all financial obligations without tapping the reserves until April 18, 2021, based on current published itineraries and assuming full occupancy. If cruise operations were to resume for an extended period of time, the unrestricted reserves would be sufficient to make the Port's cash requirements for operating expenses, including debt service through September 30, 2022, but the Port would likely miss its required debt service coverage ratios under Ordinance No. 88-66, as amended. The Government Finance Officers Association (GFOA) recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular

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general fund operating expenditures.¹ While the PortMiami budget is proprietary, this may be a prudent threshold to strive to maintain given the uncertainty for when the industry will rebound.

ADDITIONAL INFORMATION

Cruising in the United States has been halted since the U.S. Centers for Disease Control and Prevention (CDC) issued a “No Sail” order in mid-March 2020. The order has been extended several times, prohibiting cruise ships from sailing in U.S. waters, while limited operations have resumed in Europe. The CDC originally sought to extend the ban for U.S. based cruise ships through February 2021, but instead has extended the ban until October 31, 2020. The Cruise Lines International Association (CLIA), the world’s largest cruise industry association, has agreed to a voluntary suspension of U.S. cruise operations through October 31, 2020. The CLIA members include: Carnival, Crystal, Disney, MSC, Norwegian, Oceania, Princess, Regent, Royal Caribbean, and Virgin Cruises. Assuming no further extensions of the No Sail Order, the first phase of the Recovery Period would conclude on December 30, 2020.² According to Port Canaveral Chief Executive Officer John Murray, even if the no-sail order ends Oct. 31, cruising is not realistically expected to resume until mid- to late-November, "at the absolute earliest."³

In its recent justification for extending the No Sail Order until October 31, 2020, the CDC has said it is not confident that changes the cruise industry has implemented in Europe to curb the spread of COVID-19 on cruise ships are working adequately. The CDC noted that recent passenger voyages in foreign countries continue to have outbreaks, despite cruise ship operators having extensive health and safety protocols to prevent COVID-19 transmission on board and spread to communities where passengers disembark. In mid-September, the Healthy Sail Panel, which includes representatives from Royal Caribbean and Norwegian Cruises, submitted a report to the CDC with 74 recommendations to prevent the introduction and mitigate the spread of COVID-19 on cruise ships, including testing, face coverings and temperature checks (<https://www.royalcaribbean.com/content/dam/royal/resources/pdf/healthy-sail-panel-full-recommendations.pdf>). Each cruise company would develop its own protocol details once the CDC ultimately decides appropriate guidelines when cruising resumes. On October 9, 2020, Vice President Mike Pence joined cruise industry executives and the CDC director on a call to discuss COVID-19 and how the industry plans to approach the restart of operations. The industry's proposal to resume sailing will be presented to the White House Task Force, which will then provide a recommendation to President Donald Trump for next steps.

<https://www.floridatoday.com/story/news/local/2020/10/01/cdc-extends-no-sail-order-cruise-lines-questions-efforts-europe/5877231002/>

<https://www.usatoday.com/story/travel/cruises/2020/09/21/norwegian-royal-caribbean-cruise-panel-suggests-covid-19-rules/5839739002/>

<https://www.usatoday.com/story/travel/cruises/2020/10/10/pence-cruise-line-ceos-talk-resumption-sailing-us/5952097002/>

OCA contacted Broward County’s Port Everglades on October 9, 2020 to inquire about any COVID-19 relief offered to its cruise lines and spoke with Glenn Wiltshire, Deputy Director. Mr. Wiltshire advised that the Board of County Commissioners’ policy has been to not grant assistance in the form of fee waivers, despite cruise lines making requests for relief and even referring to what is being done at PortMiami. He noted that Port Everglades is different from

¹ <https://www.gfoa.org/materials/fund-balance-guidelines-for-the-general-fund>

² The mayoral memo specifies that the end of the first phase of the Recovery Period would be November 29, 2020, when the No Sail Order was to end on September 30, 2020. The No Sail Order was extended to October 31, 2020 on September 30, 2020.

³ <https://www.floridatoday.com/story/news/local/2020/10/01/cdc-extends-no-sail-order-cruise-lines-questions-efforts-europe/5877231002/>

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PortMiami in that more of their berths are used for cargo ships and it did not make financial sense for them to allow cruise ships to dock there and not pay fees. In fact, since March 2020, the cruise lines have generally still paid their lay-in fees, although Port Everglades has granted deferrals of payment. Their tariff structure is like a bundled rate, which includes dockage, wharfage, line handler, fees so they are not suspending minimum annual guarantees; however, he acknowledged that they are considering alternatives to assist their partners as they resume operations. He also shared that Royal Caribbean, Celebrity, Home America, Princess, and Carnival is anticipated to have bookings by the end of the year, but Carnival would only sail at least initially out of PortMiami and Port Canaveral.

OCA also contacted Brevard County's Port Canaveral via phone and e-mail on October 9, 2020, but is still pending a response. It should be noted that Port Canaveral has been drastically impacted by the shutdown in cruise operations. Port Canaveral's revised budget for fiscal year ending September 30, 2020 showed that the port will have an estimated loss of \$17.44 million (cruise-related operations account for 77.6% of the port's revenue in the original budget). As of July 2020, Port Canaveral had already cut 115 positions through layoffs, unpaid furloughs, and leaving vacant positions unfilled; representing about 43% of the port's pre-coronavirus staff level of 268 (153 employees remain on the payroll).
<https://www.floridatoday.com/story/news/local/2020/08/04/port-canaveral-seeks-federal-funding-recover-covid-19-cruise-halt/5569578002/>
<https://www.clickorlando.com/news/local/2020/07/31/port-canaveral-cuts-115-jobs-through-layoffs-furloughs-attribution/>

APPLICABLE LEGISLATION/POLICY

Ordinance No. 88-66, adopted on July 5, 1988, authorized the issuance of (i) \$44,950,000 in Florida Seaport Revenue Refunding Bonds, Series 1995, (ii) \$29,270,000 in Florida Seaport Revenue Bonds, Series 1996, and (iii) \$111,375,000 in Florida Seaport General Obligation Refunding Bonds, Series 2011C.

Reference: <http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2013/131179min.pdf>

Resolution No. R-130-06, adopted on January 24, 2006, clarified that proposed agenda items seeking approval of a contract or conveyance and authority to execute same shall not be placed on any committee or commission agenda unless the underlying contract or conveyance is completely negotiated, in final form, and executed by all non-County parties.

<http://www.miamidade.gov/govaction/matter.asp?matter=060239&file=false&fileAnalysis=false&yearFolder=Y2006>

Resolution No. R-791-14, adopted on September 3, 2014, directed the Mayor to provide the Miami-Dade County Property Appraiser a copy of all leases and operating agreements involving County-owned property.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2014/141723min.pdf>

Resolution No. R-732-20, adopted on July 21, 2020, authorized the Mayor to negotiate and execute a Track and Intermodal Container Transfer Facility Usage and Maintenance Agreement between the Florida East Coast Railway, L.L.C. ("FECR") and Miami-Dade County, providing FECR use of certain on-Port rail lines and on-Port intermodal container transfer facility, for an initial term of three years with three additional one-year renewal options upon mutual assent, in consideration of FECR's commitment to, among other things, pay the County a minimum of \$1,200,000.00 in annual on-Port rail and ICTF user fees (subject to a 3% annual escalator), provide on-Port-rail infrastructure and ICFT inspection and certain maintenance services, and release over \$468,000.00 in previously asserted FECR rail maintenance, refurbishment, and marketing cost claims against the County.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2020/201375min.pdf>

CONTRIBUTORS

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The Office of the Commission Auditor, Miami-Dade Board of County Commissioners

The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented

These research notes, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The OCA plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its objectives; accordingly, the OCA does not express an opinion on the data gathered by the subject matter expert(s).