

# Memorandum



**Date:** July 21, 2020

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

**From:** Carlos A. Gimenez  
Mayor

A blue ink signature of Carlos A. Gimenez, Mayor of Miami-Dade County, written over the name.

Agenda Item No. 8(J)(5)

Resolution No. R-732-20

**Subject:** Resolution Authorizing the County Mayor or the County Mayor's Designee to Negotiate and Execute a Track and Intermodal Container Transfer Facility Usage and Maintenance Agreement Between Florida East Coast Railway, L.L.C. and Miami-Dade County and Waiving Requirements of Resolution No. R-130-06

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## **Recommendation**

It is recommended that the Board of County Commissioners ("Board") approve the accompanying Resolution authorizing the County Mayor or County Mayor's Designee to negotiate and execute a Track and Intermodal Container Transfer Facility Usage and Maintenance Agreement ("Agreement") between the Florida East Coast Railway, L.L.C. ("FECR") and Miami-Dade County ("County"), providing FECR with use of certain on-Port rail lines and the on-Port Intermodal Container Transfer Facility ("ICTF"), effective retroactively as of July 1, 2020, for an initial term of three years with up to three one-year renewal options upon mutual assent, in consideration of FECR's commitment to pay the County minimum annual on-Port rail and ICTF user fees of \$1,200,000 (escalating by 3 percent per year), assumption of rail and ICTF inspection and certain maintenance obligations, and release of over \$468,000 in previously asserted FECR rail maintenance, refurbishment, and marketing cost claims against the County; and waiving prior negotiation and execution requirements of Resolution No. R-130-06.

## **Scope**

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

## **Background**

Beginning in 2011, FECR and the County entered into a series of agreements, authorized by Resolution Nos. R-188-11, R-747-11, and R-855-14, which implemented PortMiami's intermodal and rail improvement project. These agreements authorized certain repairs and improvements to rail facilities at PortMiami ("Port") up to \$25,067,000. This amount included \$22,767,000 from a U.S. Department of Transportation TIGER II Grant, plus \$2,300,000 from the Port's Capital Improvement Program. These various infrastructure enhancements reconnected the Port to the national rail system, increased the Port's rail-throughput capacity by, among other things, allowing for double-stacking of containers.

In February 2014, PortMiami re-opened its near-dock rail yard and, in conjunction with FECR, re-started on-Port rail service and operations on a limited basis. In order to jointly build-up the rail service at that time, the Port did not initially impose rail facility usage fees on FECR. Since 2014, the average annual rail yard throughput volume is approximately 29,000 containers. In Fiscal Year 2019, rail volumes were 26,359 containers.

The Port and FECR began discussions in 2019 to enter into a rail facility usage and maintenance agreement that would require FECR to, among other things, commence paying the County for FECR's use of County land and rail facilities, including the ICTF, and also require FECR to inspect and maintain the County owned rail lines and

ICTF it had been using without charge. Although the Port and FECR have not yet negotiated all terms of the contemplated Agreement, the parties have already agreed to the following:

- Effective July 1, 2020 FECR shall pay the County annual on-Port rail and ICTF user fees , to be paid on a per box basis, subject to a FECR minimum annual guarantee of \$1,200,000 (escalating annually at 3 percent)

| Effective July 1, 2020. |         |          |             |
|-------------------------|---------|----------|-------------|
| Container Volumes       |         | 10 Acres | Minimum     |
| From                    | to      | Rate*    | Guarantee*  |
| 0                       | 40,000  | \$30.00  | \$1,200,000 |
| 40,001                  | 50,000  | \$30.00  |             |
| 50,001                  | 60,000  | \$30.00  |             |
| 60,001                  | 70,000  | \$37.50  |             |
| 70,001                  | 80,000  | \$41.67  |             |
| 80,001                  | 90,000  | \$45.83  |             |
| 90,001                  | 100,000 | \$50.00  |             |
| *3% Annual escalation   |         |          |             |

- FECR agrees to accept the Port infrastructure “where is/as is” and undertake all inspections of the rail bascule bridge, and all maintenance thereof above the bridge deck, and also undertake inspection and maintenance of all rails, signals, crossings, and related rail infrastructure (both inside and outside of the ICTF) for the terms of the Agreement;
- FECR shall release over \$468,000 in previously asserted FEC rail maintenance, refurbishment, and marketing and promotional cost claims against the County;
- County will provide FECR with certain on-Port rail facility and ICTF usage rights for an initial three-year term with up to three one-year renewal options upon mutual assent; and
- PortMiami and FECR will jointly establish a Port Performance Task Force with the mission of identifying ways to improve productivity, reduce costs and enhance PortMiami’s competitive position.

The agreement will also allow the County to reduce the size of the ICTF from approximately 14 acres to approximately 10 acres, upon written notice, and such reduction will not reduce FECR’s minimum annual guarantee. Notwithstanding the date of execution of the to-be-negotiated Agreement, FECR’s payment, maintenance, and certain other obligations thereunder will apply retroactively as of July 1, 2020. It is important to note, on October 29, 2019, the Board approved Resolution No. R-1146-19, authorizing the execution of a Memorandum of Understanding (MOU) with Virgin Trains USA. This MOU summarized terms for a contemplated future agreement to implement passenger rail service at PortMiami, and contemplates that one acre of land from the then 14-acre ICTF would be removed therefrom and used to build a future passenger rail station.

### **Fiscal Impact/Funding Source**

The Agreement will have a positive fiscal impact to the County from a FECR minimum annual guarantee of \$1,200,000 in on-Port rail and ICTF user fees (subject to a 3 percent annual escalator), based on \$30 per container times 40,000 containers per year, plus potential additional annual revenue if FECR’s annual throughput exceeds 40,000 containers. FECR has also agreed to assume certain rail, ICTF, and bascule bridge inspection and maintenance obligations described above (estimated at approximately \$2,500,000 over the three year period), and to release over \$468,000 in previously asserted FECR rail maintenance, refurbishment, and marketing cost claims against the County.

**Track Record/Monitoring**

The Seaport Department staff members responsible for monitoring this Agreement are Hydi Webb, Deputy Director and Andy Hecker, Managing Port Director, CFO.

**Delegation of Authority**

Approval of this item delegates authority to the County Mayor or County Mayor's designee to negotiate and execute an on-Port rail facility and ICTF usage and maintenance agreement with FECR and to exercise the termination and other County rights to be included therein. In connection therewith, the future usage and maintenance agreement will authorize the County Mayor or the County Mayor's designee to take the following actions on behalf of the County: (i) approve up to three one-year renewal terms; (ii) reduce the size of the ICTF by approximately four acres (to approximately ten acres) to accommodate future passenger rail service or other Port needs; and (iii) approve potential future on-Port rail infrastructure improvements to be funded by future grant funds applied for and received by the County and/or FECR.



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Jack Osterholt  
Deputy Mayor

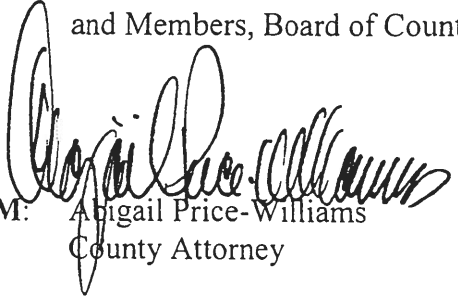


# MEMORANDUM

(Revised)

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

DATE: July 21, 2020

FROM:   
Abigail Price-Williams  
County Attorney

SUBJECT: Agenda Item No. 8(J)(5)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

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

Agenda Item No. 8(J)(5)  
7-21-20

RESOLUTION NO.      R-732-20

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE A TRACK AND INTERMODAL CONTAINER TRANSFER FACILITY USAGE AND MAINTENANCE AGREEMENT BETWEEN FLORIDA EAST COAST RAILWAY, L.L.C. (FECR) AND MIAMI-DADE COUNTY (COUNTY) WITH AN ESTIMATED FISCAL IMPACT TO THE COUNTY OF A MINIMUM OF \$1,200,000.00 IN ANNUAL PORT RAIL AND RAIL YARD USER FEE REVENUE, RECEIPT OF CERTAIN FECR-PROVIDED PORT-RAIL INFRASTRUCTURE INSPECTION AND MAINTENANCE SERVICES, AND FECR'S RELEASE OF OVER \$468,000.00 IN PREVIOUSLY ASSERTED RAIL MAINTENANCE, REFURBISHMENT, AND MARKETING COST CLAIMS AGAINST THE COUNTY; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL TERMINATION AND RENEWAL RIGHTS CONTAINED THEREIN UNLESS RESERVED TO THE BOARD

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

**Section 1.** Authorizes the County Mayor or County Mayor's designee to negotiate and execute a Track and Intermodal Container Transfer Facility Usage and Maintenance Agreement ("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.

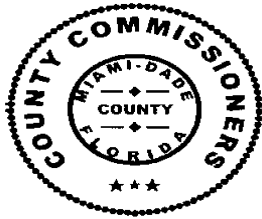
**Section 2.** Authorizes the County Mayor or County Mayor's designee to exercise all termination and other County rights set forth in the Agreement and not reserved to this Board, including (i) approval of up to three one-year renewal terms; (ii) reduction in the size of the ICTF by approximately four acres (to approximately ten acres) to accommodate future passenger rail service or other Port needs; and (iii) approval of potential future on-Port rail infrastructure improvements to be funded by future grant funds applied for and received by the County and/or FECR.

**Section 3.** Pursuant to County Resolution No. R-791-14, a copy of the executed Agreement and all exhibits and riders and amendments thereto shall be provided by the County Mayor or County Mayor's designee to the County Property Appraiser within 30 days of the Agreement's execution.

The foregoing resolution was offered by Commissioner **Rebeca Sosa** , who moved its adoption. The motion was seconded by Commissioner **Audrey M. Edmonson** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared this resolution duly passed and adopted this 21<sup>st</sup> day of July, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

**Melissa Adames**

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

**MAG**

Miguel A. Gonzalez