

MEMORANDUM

Amended
Agenda Item No. 8(J)(2)

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

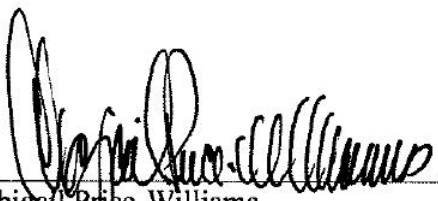
DATE: July 21, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution authorizing the County Mayor to negotiate and execute a fourth amendment (Fourth Amendment) to the Terminal Operating Agreement (Operating Agreement) between Terminal Link (Miami) LLC (TLM) and Miami-Dade County (County) with an estimated fiscal impact of \$1,500,000.00 in additional capital expenditures by the County, an additional \$495,000.00 in guaranteed annual revenues to the County escalating at three percent per year from an additional 500 guaranteed crane hours per year over the remaining term of the Operating Agreement with such additional revenue commencing upon the County's substantial completion of certain optional cargo yard improvements, up to \$1,132,835.00 in rental and cargo wharfage and dockage revenues to the County from up to 6 months' use by TLM of approximately 10 acres of cargo terminal area, and deferring approximately \$1,850,000.00 in debt-service payments by the County from deferred capital obligations; and further authorizing the County Mayor to exercise all rights contained in the Operating Agreement, including the fourth amendment to the Operating Agreement, inclusive or rights of renewal and termination

Resolution No. R-729-20

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


Abigail Price-Williams
County Attorney

APW/uw

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.

Subject: Resolution Authorizing the County Mayor or the County Mayor's Designee to Negotiate and Execute the Fourth Amendment to the Terminal Operating Agreement Between Miami-Dade County and Terminal Link (Miami) LLC

Recommendation

It is recommended that the Board of County Commissioners ("Board") approve the accompanying resolution, which authorizes the County Mayor or the County Mayor's Designee to negotiate and execute the Fourth Amendment ("Fourth Amendment") to the Terminal Operating Agreement ("Operating Agreement") between Miami-Dade County ("County") and Terminal Link (Miami) LLC ("TLM"). The Fourth Amendment will authorize the County to expend up to \$1,500,000 in additional capital expenditures, which were previously required to be borne by TLM. In exchange, TLM will (a) guarantee an additional \$495,000 in annual revenues to the County, escalating at 3 percent per year, from an additional 500 guaranteed crane hours per year over the remaining term of the Operating Agreement with such additional revenue commencing upon the County's substantial completion (as evidenced by the issuance of a temporary certificate of occupancy) of the future infrastructure improvements (the "Enhanced Phase 2 Infrastructure Improvements"); (b) pay the County up to \$1,132,835 in rental and cargo wharfage and dockage revenues from up to 6 months' use by TLM of approximately 10 acres of cargo terminal area; and (c) delay the start date of the Enhanced Phase 2 Infrastructure Improvements to no earlier than January 1, 2022, thereby deferring approximately \$1,850,000 in annual debt-service payments by the County.

Scope

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

Background

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

On July 6, 2016, the Board adopted Resolution No. R-578-16, approving Amendment No. 1 to the Operating Agreement, expanding the terminal area to approximately 80.62 acres and further increasing the guaranteed cargo volumes and revenues.

On November 8, 2018, the Board adopted Resolution No. R-1166-18, approving the Second Amendment to the Operating Agreement. The Second Amendment reduced TLM's operating footprint by approximately 20 acres to provide adequate space for the development of Cruise Terminals AA and AAA, while simultaneously creating higher cargo throughput capacity per acre through TLM's purchase and use of electric Rubber-Tired Gantries ("e-RTGs"). Also, as part of the Second Amendment and as a precondition to the return of the 20 acres, the County committed to (1) construct the Phase 1 e-RTG densification project which provides increased cargo capacity on a smaller footprint; (2) construct cargo gates within TLM's smaller footprint; (3) acquire and transport 4 diesel RTGs; and (4) contribute towards TLM's redevelopment of its maintenance and repair building (as it needs to be relocated for construction of the Cruise Terminal AA and AAA footprint) and TLM's purchase of bus bars, which are a component of the e-RTG project. The Second Amendment also included an agreement to negotiate regarding the Enhanced Phase 2 Infrastructure Improvements that would further enhance the efficiency and throughput capacity of TLM's cargo yard.

On September 19, 2019, the Board adopted Resolution No. R-989-19, approving the Third Amendment to the Operating Agreement.¹ The Third Amendment included (1) conditions for the return to the County of approximately 6 acres of land from TLM's terminal area to accommodate the future Berth 10, one of which gave TLM the option to require the County to construct the Enhanced Phase 2 Infrastructure Improvements starting no earlier than January 1, 2021; (2) authorization for the County to construct the Phase 2 e-RTG project and a 250-space shared parking garage; (3) TLM's construction of an additional floor in its administration building, within the same timeframe agreed upon in the Second Amendment, to be leased to PortMiami Crane Management, Inc. or successor subtenant of the County's selection; (4) early access to certain areas to advance construction of the berths for Cruise Terminals AA and AAA; (5) authorization for modification of certain land turnover milestones in the Second Amendment to the Operating Agreement; and (6) the extension of the term of the Operating Agreement for an additional 20 years for a new expiration date of September 30, 2053 with two five-year renewal options that would extend the term through 2063.

Under both the Second and Third Amendments, the County and TLM are required to meet certain construction milestones before the parcels for Cruise Terminals AA and AAA are returned to the County. During construction of the improvements to the TLM terminal area, TLM will continue to make the required payments for its entire terminal area (including the parcels for the future Cruise Terminals AA and AAA), except during the limited moments that portions of such land may be temporarily occupied by MSC Miami Cruise Terminals LLC for the completion of certain preliminary pier work. Once all turnover milestones are

¹ The Board approved the Third Amendment on September 19, 2019, and the Third Amendment became effective on March 11, 2020, when it was executed by TLM.

achieved, however, and the land is returned to the County, TLM will have no further payment obligations with respect to the turned-over parcels. The temporary return to TLM of portions of the turned-over parcels, as described below, would ensure that the County continues to receive revenues from what would otherwise be non-revenue generating County-held land and which might not be immediately needed given the altered construction periods for Cruise Terminals AA and AAA and Berth 10.

The proposed Fourth Amendment, once negotiated and executed, will authorize the County to contribute an additional \$1,500,000 towards TLM's share of capital obligations under the Second and Third Amendments (i.e., maintenance and repair facility and site work, shared utility vaults, and associated utilities and infrastructure). In exchange, TLM will agree to: (1) increase their guaranteed crane hours by 500 hours per annum from substantial completion of the Enhanced Phase 2 Infrastructure Improvements through the conclusion of the of the Operating Agreement; (2) guarantee up to an additional 6 months of ground lease rental, with cargo wharfage and dockage guarantees, for approximately 10 acres; and (3) delay the Enhanced Phase 2 Infrastructure Improvements by approximately 1 year with a construction start date no earlier than January 1, 2022.

Fiscal Impact/Funding Source

The accompanying resolution will have a positive long-term fiscal impact on the County. The County will contribute \$1,500,000 to the TLM projects to be paid from the Port's Fiscal Year 2021 capital budget by using available bonds proceeds at an annual estimated debt service of \$103,208. In exchange for this capital contribution, TLM will:

- (1) Increase their guaranteed crane hours by 500 hours per annum commencing on the substantial completion of the Enhanced Phase 2 Infrastructure Improvements through the conclusion of the term of the Operating Agreement. This increase will guarantee the County revenues in the amount of approximately \$495,000 in the first effective year and will escalate at 3 percent each year through the conclusion of the term of the Operating Agreement, as noted below. With consideration of the established 3 percent crane rental rate escalation each fiscal year, and assuming substantial completion of the Enhanced Phase 2 Infrastructure Improvements in Fiscal Year 2023/24 (as evidenced by the issuance of a temporary certificate of occupancy) the total estimated additional guaranteed revenue will be approximately \$24,000,000 over the remaining 30 years of the initial term of the Operating Agreement. For each year beyond Fiscal Year 2023/24 that substantial completion of the Enhanced Phase 2 Infrastructure Improvements is delayed, the anticipated additional crane revenues of approximately \$24,000,000 would be downwardly adjusted by approximately \$495,000 per year, plus the escalation rate. In that event, however, the County will realize the savings described in item (3) of the fiscal impact portion of this memorandum;
- (2) Guarantee up to six additional months of revenues from approximately 10 acres, generating up to \$401,558. The cargo throughput guarantee associated with the same 10 acres will generate up to \$731,277 in cargo wharfage and dockage revenue for the County; and

- (3) Delay the Enhanced Phase 2 Infrastructure Improvements such that the construction start date would be no earlier than January 1, 2022. This delays approximately \$27,000,000 in capital expenditures by 1 year, which will defer an estimated \$1,850,000 in debt service payments by the County for that year. To the extent TLM delays the exercise of its option to require the County to perform the Enhanced Phase 2 Infrastructure Improvements, the County will save an estimated \$1,850,000 for each year of delay.

Since 2008, TLM, a valued PortMiami partner, has generated approximately \$200,000,000 in revenues to PortMiami. TLM continues to meet its minimum annual throughput and crane rental guarantees during this COVID-19 pandemic period.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the Agreement are Andy Hecker, Managing Port Director and CFO; Elizabeth Ogden, Assistant Port Director, Capital Development, and Becky Hope, Chief, Planning and Property Development.

Delegated Authority

This item authorizes the County Mayor or County Mayor's designee to negotiate and execute, for and on behalf of the County, the Fourth Amendment to the Operating Agreement and to exercise all rights contained therein, including rights of renewal and termination.



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: Amended
Agenda Item No. 8(J)(2)

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 _____

Amended
Agenda Item No. 8(J)(2)
7-21-20

RESOLUTION NO. R-729-20

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE A FOURTH AMENDMENT (FOURTH AMENDMENT) TO THE TERMINAL OPERATING AGREEMENT (OPERATING AGREEMENT) BETWEEN TERMINAL LINK (MIAMI) LLC (TLM) AND MIAMI-DADE COUNTY (COUNTY) WITH AN ESTIMATED FISCAL IMPACT OF \$1,500,000.00 IN ADDITIONAL CAPITAL EXPENDITURES BY THE COUNTY, AN ADDITIONAL \$495,000.00 IN GUARANTEED ANNUAL REVENUES TO THE COUNTY ESCALATING AT THREE PERCENT PER YEAR FROM AN ADDITIONAL 500 GUARANTEED CRANE HOURS PER YEAR OVER THE REMAINING TERM OF THE OPERATING AGREEMENT WITH SUCH ADDITIONAL REVENUE COMMENCING UPON THE COUNTY'S SUBSTANTIAL COMPLETION OF CERTAIN OPTIONAL CARGO YARD IMPROVEMENTS, UP TO \$1,132,835.00 IN RENTAL AND CARGO WHARFAGE AND DOCKAGE REVENUES TO THE COUNTY FROM UP TO 6 MONTHS USE BY TLM OF APPROXIMATELY 10 ACRES OF CARGO TERMINAL AREA, AND DEFERRING APPROXIMATELY \$1,850,000.00 IN DEBT-SERVICE PAYMENTS BY THE COUNTY FROM DEFERRED CAPITAL OBLIGATIONS; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL RIGHTS CONTAINED IN THE OPERATING AGREEMENT, INCLUDING THE FOURTH AMENDMENT TO THE OPERATING AGREEMENT, INCLUSIVE OR RIGHTS OF RENEWAL AND TERMINATION

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

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

Section 1. Adopts the foregoing recital as true and correct and incorporates said recital as if set forth herein.

Section 2. Authorizes the County Mayor or County Mayor’s designee to negotiate and execute a Fourth Amendment (“Fourth Amendment”) to the Terminal Operating Agreement (“Operating Agreement”) between Terminal Link (Miami) LLC (“TLM”) and Miami-Dade County (the “County”), to accomplish substantially the same objectives as set forth in the accompanying memorandum, with an estimated fiscal impact of (a) \$1,500,000.00 in additional capital expenditures by the County; (b) an additional \$495,000.00 (approximately and calculated from Fiscal Year 2023/24) in guaranteed annual revenues to the County, escalating at three percent per year, from an additional 500 guaranteed crane hours per year over the remaining term of the Operating Agreement with such additional revenue commencing upon the County’s substantial completion of certain optional cargo yard improvements; (c) up to \$1,132,835.00 in rental and cargo wharfage and dockage revenues to the County from up to 6 months use by TLM of approximately 10 acres of cargo terminal area; and (d) approximately \$1,850,000.00 in annual deferred debt-service payments by the County from deferred capital obligations.

Section 3. Authorizes the County Mayor or County Mayor’s designee to exercise all rights contained in the Operating Agreement, including the Fourth Amendment to the Operating Agreement, inclusive of rights of renewal and termination.

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

The Chairperson thereupon declared this resolution duly passed and adopted this 21st 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