

# Memorandum



**Date:** October 24, 2006  
**To:** Honorable Chairman Joe A. Martinez and Members,  
Board of County Commissioners  
**From:** George M. Burgess  
County Manager  
**Subject:** Resolution Authorizing the Execution of Cruise Terminal Agreement between Miami-Dade  
County and Crystal Cruises, Inc.

Amended  
Agenda Item No. 14(A)(5)

R#1228-06

## RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a Cruise Terminal Agreement ("Agreement") between Miami-Dade County and Crystal Cruises, Inc. ("Crystal Cruises").

## BACKGROUND

The Port of Miami is the "Cruise Capital of the World" and is homeport to the world's largest cruise lines. In 2005, the Port of Miami experienced a 3% increase in cruise passenger traffic, with more than 3.6 million customers. To date, cruise passenger numbers continue to show increases over last year's figures. This increase is due, in part, to the Port's Tariff incentive initiatives, its extensive capital development program and its continued marketing efforts. These efforts have helped the Port attract new, smaller niche-market lines such as Windjammer Barefoot Cruises, Oceania and, more recently, Crystal Cruises.

Under the terms of the proposed Agreement, Crystal Cruises will call at least seven (7) times at the Port during fiscal year 2006-2007, and at least seven (7) times during fiscal year 2007-2008. Crystal Cruises shall pay the County a total of \$14.56 per passenger for wharfage. This represents \$7.28 per each embarking passenger plus \$7.28 per each disembarking passenger. Dockage shall be \$0.191 per gross registered ton per call. This represents a 17% discount from the existing Tariff rates which are approved annually as part of the County's budget process. Should the Port increase its Tariff rates for dockage and/or wharfage during the contract period, the Agreement provides for a corresponding increase to the rates. This Agreement shall be effective for a term of two (2) years.

The Port encourages cruise lines to execute agreements with Miami-Dade County to solidify long-term commitments and guarantee future growth in exchange for Tariff discounts. This practice has become common among the industry's major ports. The rates detailed above provide an incentive for the smaller "luxury" lines to utilize the Port of Miami. Additionally, their presence encourages utilization of Port facilities on off-peak days as their itineraries tend to be longer. These proposed rates are consistent with competing ports and are commensurate to discounts given to other cruise lines at the Port of Miami based on those lines' existing passenger volume commitments and the length of their Board-approved agreements.

## FISCAL IMPACT

This Agreement is expected to generate over \$350,000 annually of additional revenue to the Port.

  
Assistant County Manager

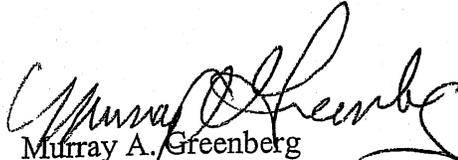


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** October 24, 2006

**FROM:**   
Murray A. Greenberg  
County Attorney

**SUBJECT:** Amended  
Agenda Item No. 14(A)(5)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

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

Amended  
Agenda Item No. 14(A)(5)  
10-24-06

RESOLUTION NO. 1228-06

RESOLUTION APPROVING A CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CRYSTAL CRUISES, INC.; AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE SAID AGREEMENT AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

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 hereby approves a Cruise Terminal Agreement between Miami-Dade County and Crystal Cruises, Inc.; in substantially the form attached and after review by the County Attorney's Office; and authorizes the County Manager to execute same on behalf of Miami-Dade County and to exercise all rights conferred therein.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of October, 2006. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency. **JMM**

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

Jess M. McCarty

CRUISE TERMINAL AGREEMENT BETWEEN  
CRYSTAL CRUISES, INC. AND MIAMI-DADE COUNTY

THIS AGREEMENT is entered this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between CRYSTAL CRUISES, INC., a <state> \_\_\_\_\_ corporation, registered to do business in the State of Florida (hereinafter referred to as "CRYSTAL CRUISES"), and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "COUNTY").

WITNESSETH:

WHEREAS, the COUNTY owns and operates the Dante B. Fascell Port of Miami-Dade through the Miami-Dade County Seaport Department; and

WHEREAS, CRYSTAL CRUISES provides passenger cruise ship services; and

WHEREAS, CRYSTAL CRUISES intends to operate passenger cruise ship services out of the Port of Miami, calling on the Port with such frequency CRYSTAL CRUISES has applied to the COUNTY to enter into a cruise terminal agreement; and

WHEREAS, the COUNTY finds it to be in the best interest of the COUNTY to enter into a cruise terminal agreement with CRYSTAL CRUISES.

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

Section 1. RULES OF LEGAL CONSTRUCTION.

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

- a) A defined term has the meaning assigned to it;
- b) Words in the singular include the plural, and words in plural include the singular;

- d) A pronoun in one gender includes and applies to other genders as well; and
- e) The terms “hereunder”, “herein”, “hereof”, “hereto” and such similar terms shall refer to the instant Cruise Terminal Agreement in its entirety and not to individual sections or articles
- f) The Parties hereto agree that this Agreement shall not be more strictly construed against either the COUNTY or CRYSTAL CRUISES.

Section 2. Definitions As used herein:

“Agreement” means this Cruise Terminal Agreement between the COUNTY and CRYSTAL CRUISES.

“Applicable Laws” means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs (including without limitation Port of Miami Terminal Tariff No. 010), policies and procedures and orders which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

“COUNTY” means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including the Miami-Dade County Seaport Department.

“CRYSTAL CRUISES” means Crystal Cruises, Inc. a \_\_\_\_\_ corporation, registered to do business in the State of Florida.

“CRYSTAL CRUISES Vessel” means any vessel either owned, time or voyage chartered, or operated by CRYSTAL CRUISES.

“Dockage” shall have the meaning as defined in the Tariff.

“Effective Date” shall have the meaning set forth in Section 3 hereof.

"Fiscal Year" means the County's fiscal year, which begins October 1 and ends September 30.

"Passenger Cruise Ship Services" means the operation by the Operator of passenger cruise services from Miami-Dade County, Florida for passengers and accompanying baggage.

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

"Port Director" means the Director of the Port or his designee.

"Tariff" means Port of Miami Terminal Tariff # 010, as it may be amended from time to time.

"Wharfage" shall have the meaning as defined in the Tariff.

"Year" means the Port's Fiscal Year from October 1 - September 30.

#### Section 3. Agreement - Effective Date and Term

The effective date of this Agreement ("Effective Date") shall be the effective date of the resolution of the Board of County Commissioners that approves this Agreement. The Term of this Agreement shall be two (2) years.

#### Section 4. Wharfage

Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing Passenger Cruise Ship Services, the wharfage rates that apply to passengers on a CRYSTAL CRUISES Vessel shall be \$7.28 for embarkation and \$7.28 for debarkation, for a total of \$14.56 for the term of this Agreement so long as CRYSTAL CRUISES complies with the requirements of section 6 below. Should the Wharfage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff

rate increase. Nothing in this agreement shall be construed as limiting or prohibiting the County from imposing any new or additional fee, or increasing any existing fee, including but not limited to wharfage, dockage, harbor or other fee imposed on Crystal Cruises.

Section 5. Dockage

Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing Passenger Cruise Ship Services, the dockage rate that applies to CRYSTAL CRUISES VESSELS shall be \$ .191 per gross registered ton per call for the term of this Agreement so long as CRYSTAL CRUISES complies with the requirements of section 6 below. Should the Dockage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase. Nothing in this agreement shall be construed as limiting or prohibiting the County from imposing any new or additional fee, or increasing any existing fee, including but not limited to wharfage, dockage, harbor or other fee imposed on Crystal Cruises.

Section 6. Billing, Payment and Call Guarantee.

CRYSTAL CRUISES shall keep its account, as billed through a permitted Port agent, current at all times in order to maintain the benefits of this Agreement. CRYSTAL CRUISES shall call at least seven (7) times at the Port during the 2006-07 fiscal year and at least seven (7) times during the 2007-08 fiscal year.

Section 7. Termination

CRYSTAL CRUISES or the COUNTY may terminate this agreement upon 60 days notice in either party's sole discretion, without penalty, with or without cause. Upon termination of the Agreement, CRYSTAL CRUISES shall pay applicable Tariff rates.

Section 8. Notices

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the COUNTY:

Seaport Director  
Miami-Dade Seaport Department  
1015 North American Way, Suite 200  
Miami, Florida 33132

With a copy to:

County Attorney  
Miami-Dade County  
Stephen P. Clark Center  
111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor  
Miami, Florida 33128

To CRYSTAL CRUISES:

With a copy to:

Section 9. Agreement Not a Lease

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or improvements is created by this Agreement.

Section 10. Commitment on Indemnity and Insurance

- (a) Indemnification. CRYSTAL CRUISES agrees to indemnify, protect and hold harmless the COUNTY, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which the COUNTY, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the negligent acts or intentional misconduct of CRYSTAL CRUISES or its agents, employees, officers or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the COUNTY or its employees, agents or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the COUNTY, its agents or employees may become liable. Upon request of the COUNTY, CRYSTAL CRUISES shall undertake to defend, at its sole cost and expense, any and all suits brought against the COUNTY in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence by CRYSTAL CRUISES or its agents, employees, officers or contractors.

- (b) Environmental. CRYSTAL CRUISES shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Port.
- (c) Insurance Coverage Required. CRYSTAL CRUISES shall carry all insurance as required by the Tariff.

#### Section 11. Exclusive Venue and Choice of Law

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission.

#### Section 12. No Oral Change or Termination

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or

discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

#### Section 13. Compliance with Applicable Laws

Throughout the Term of this Agreement, CRYSTAL CRUISES shall comply with all Applicable Laws. In the event CRYSTAL CRUISES decides to act as its own agent, CRYSTAL CRUISES shall additionally comply with all Applicable Laws (including the Tariff) related to agents and shall apply for and receive a permit to act as agent and meet all requirements for receiving a permit to act as an agent including but not limited to providing the required payment guarantee.

#### Section 14. Nuisance

CRYSTAL CRUISES shall not commit any nuisance or do or permit to be done anything that may result in the creation or commission of a nuisance in or around the Port.

#### Section 15. Representations

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

#### Section 16. No Exclusive Remedies

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

#### Section 17. Failure to Exercise Rights not a Waiver

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

Section 18. Events of Default

- (a) CRYSTAL CRUISES shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:
- (i) CRYSTAL CRUISES fails to timely comply with any payment obligation which is not cured within thirty (30) days from CRYSTAL CRUISES's receipt of written notice from the COUNTY of failure to meet such payment obligation.
  - (ii) CRYSTAL CRUISES fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from the COUNTY specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, CRYSTAL CRUISES shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.
  - (iii) If CRYSTAL CRUISES shall be adjudicated bankrupt, or if CRYSTAL CRUISES shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of CRYSTAL CRUISES are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of CRYSTAL CRUISES which is not dismissed within 60 days of such appointment.

- (b) The COUNTY shall be in default under this Agreement if the COUNTY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from CRYSTAL CRUISES specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not interfere with the operations of CRYSTAL CRUISES at the Port, the COUNTY shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

#### Section 19. Remedies Upon Default

Upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may terminate this Agreement and pursue all remedies available at law or in equity.

#### Section 20. Severability

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

### Section 21. Assignment

The term of this Agreement shall inure to the exclusive benefit of CRYSTAL CRUISES and is binding upon CRYSTAL CRUISES. CRYSTAL CRUISES may not assign or transfer this Agreement, or any rights hereunder, without the prior written consent of the COUNTY.

### Section 22. Obligations Surviving Termination Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

### Section 23. Lack of Agency Relationship

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

IN WITNESS WHEREOF, the COUNTY and CRYSTAL CRUISES have caused this Agreement to be duly executed.

CRYSTAL CRUISES, INC.,  
a California corporation

By: 

Name: Eiji Hoshi  
Title: Secretary

Date: September 8, 2006

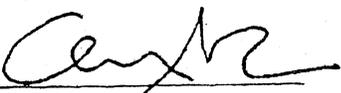
MIAMI-DADE COUNTY  
a political subdivision of the  
State of Florida

By \_\_\_\_\_  
County Manager

Date: \_\_\_\_\_

ATTEST:

Name: Octavio Sanchez

By: 

Title: Manager Port Operations

Date: September 8, 2006

ATTEST:

CLERK OF THE BOARD

By: \_\_\_\_\_

Deputy Clerk

Date: \_\_\_\_\_