Memorandum

MIAMI-DADE COUNTY

Date:	June 5, 2007
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Resolution Authorizing Agreement between Miami-Dade County and Carnival Corporation

Amended
Agenda Item No. 8(Q)(1)(A)

R#703-07

Recommendation

It is recommended that the Board approve the accompanying resolution authorizing the County Mayor or his designee to execute an Agreement between Miami-Dade County and Carnival Corporation ("Carnival") related to outstanding business issues at the Port of Miami.

Scope

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

This agreement, among other things, (i) commits Carnival to pay the Port $.64 for each embarking and $.64 for each disembarking passenger (the Facility Maintenance and Improvement Fee); (ii) resolves a long standing parking charge and rent payment dispute between the parties for Carnival's office space use at Terminals B & C, including related interest and late payment fees; (iii) provides reimbursement by the County for prior passenger shuttling costs incurred by Carnival ($39,126); (iv) provides reference and allocation of oversight staff for the construction of a parking garage for Terminals D & E; (v) commits the County to provide berthing facilities for three (3) Carnival vessels on Saturdays between August 25, 2007 – October 2008, and complete any necessary gangway adjustments by November 15, 2007.

Fiscal Impact/Funding Source

Approximately $1.1 million paid by Carnival to the County throughout a 12 month period (Facility Maintenance and Improvement Fee) commencing within ten days of execution of the Agreement; plus a net settlement amount of $322,344 for disputed rent and parking fees (less reimbursable shuttling costs), payable to the County within ten (10) days of execution of the Agreement.

Track Record/Monitor

Carnival is presently one of the largest customers and a tenant at the Port of Miami. Its presence at the Port dates back to 1972.

The Seaport Department staff members responsible for monitoring this agreement are Juan Kuryla, Assistant Port Director, Maritime Services and Cristina Calderon, Seaport Property Manager.

Background

As part of the County's annual budget process, in September 2006, the Board adopted new/revised rates for various Seaport Department ("Port") charges. Among these charges, a new Facility Maintenance and Improvement Fee ("the Fee") was implemented effective October 1, 2006, sunsetting September 30, 2007. This Fee amounted for cruise lines to $.64 for each embarking and $.64 for each disembarking passenger. From its inception, Carnival contended that the Fee was illegally imposed on them pursuant to certain rate increase limitations provided in the Cruise Terminal Agreement ("CTA") between the County and Carnival,

approved by the Board in October 1998. The County disagreed with Carnival's position on this matter and proceeded with the implementation of the Fee.

Throughout the past seven months, several meetings have been held with Carnival's senior management to resolve this matter. Negotiations on this issue have resulted in Carnival agreeing to start paying the Fee within ten days of execution of this Agreement for a twelve month period and the County waiving any late charges associated with the Fee. At this time, all other cruise lines calling the Port of Miami are paying the Fee, with the exception of Royal Caribbean Cruise Line ("RCCL"), which began the fiscal year paying and subsequently suspended its payments. Negotiations with RCCL are ongoing.

This proposed Agreement also resolves a rent dispute dating back to FY 1998-99. The 1998 CTA provides Carnival with preferential use of Terminals B & C to berth their vessels as well as process their passengers. The terminals consist of common areas, which can also be used by other lines when Carnival is not occupying the terminals; as well as office space, some of which Carnival occupies exclusively.

In 1999, the Port presented Carnival with a lease for 7,507 square feet of space for their use of Terminals B & C and inputted this receivable into the billing system. This space included several common areas such as check in counters, lounges and offices. Carnival contended that the CTA provided for their usage of the terminals as needed during ship days and, thus; no rent payments were due to the County. The County disagreed with Carnival's interpretation, and although limited subsequent correspondence was transmitted between the parties, the issue was left unresolved and a lease was not executed.

A review of this matter by the new port administration revealed that the 7,507 square feet billed to Carnival is not the correct amount; as only certain areas were used exclusively by Carnival. Currently, Carnival is occupying 1,147 square feet of office space on an exclusive basis, while all other areas of the terminal are available to other cruise lines. To settle this issue, Carnival has agreed to pay the County $361,470 of back rent and future rent through June 30, 2007, for its use of Terminals B & C. In return, the County agrees to waive all related late payment, interest, and other fees accrued/to accrue on this Terminals B & C receivable account through June 30, 2007, as well as an outstanding employee parking receivable totaling approximately $10,870 and its associated late fees. Furthermore, the County agrees to reimburse Carnival $39,126 for passenger shuttle services. These costs were incurred by Carnival on certain weekends from late 2005 through 2006 to provide transportation for those passengers parking their vehicles in lots distant from the cruise terminals. To provide better service to its customers, the Port implemented a passenger shuttle service in January 2007.

Under the terms of the Agreement, the Port also guarantees Carnival three berths for Carnival vessels every Saturday from August 2007 – October 2008; commits to conduct any necessary gangway adjustments by November 15, 2007; and agrees to identify a Seaport Department employee on an as needed basis for expediting progress through the County approval and bid process should the Request to Advertise for a new parking garage (presented under separate cover) be approved by the Board. As also mentioned in the Agreement, the County and Carnival agree that all references to "Terminals" or "Terminals 8 & 9" (the old names for B & C) within the CTA are amended to refer to the new Terminals D & E once such terminals are completed by the County and Carnival commences operations from said terminals.

A lease agreement for office space usage at Terminals D & E will be brought to the Board for its consideration in the near future.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: June 5, 2007

FROM: Murray A. Greenberg County Attorney

SUBJECT: Amended Agenda Item No. 8(Q)(1)(A)

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**

Amended

Approved _____ Mayor

Veto _____

Override _____

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

6-5-07

RESOLUTION NO. 703-07

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CARNIVAL CORPORATION RELATED TO OUTSTANDING BUSINESS ISSUES AT THE PORT OF MIAMI; 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:

Section 1. Approves the Agreement between Miami-Dade County and Carnival Corporation, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or his designee to execute the Agreement after review and approval by the County Attorney's Office; 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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of June, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MMJ

Jess M. McCarty

AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CARNIVAL CORPORATION RELATED TO OUTSTANDING BUSINESS ISSUES

THIS AGREEMENT (hereinafter the "Agreement") is entered this _____ day of _____, 2007, by and between Carnival Corporation (hereinafter "Carnival"), a Panamanian corporation, and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter the "County"). Carnival and the County are hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter the "Port") is located; and

WHEREAS, the County operates the Port through the Miami-Dade County Seaport Department which is a department of the County; and

WHEREAS, on September 20, 2006 as part of its fiscal year 2006-07 budget, the County imposed a Facilities Maintenance and Improvement Fee of $0.64 for each cruise passenger embarking and $0.64 for each cruise passenger debarking at the Port, and $3.57 per TEU (excluding empties) for each cargo container beginning October 1, 2006 for one year; and

WHEREAS, certain business issues have arisen between Carnival and the County related to office space and rental payments and the Facilities Maintenance and Improvement Fee and otherwise; and

WHEREAS, the Parties now wish to amicably resolve these particular issues, and memorialize their agreement in this document;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants, term and conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the Parties hereto do and hereby mutually agree and bind themselves as follows:

1. Within ten (10) business days after the execution of this Agreement and continuing for a twelve month period, Carnival will pay to the County the Facilities Maintenance and Improvement Fee (the "Facilities Fee") equal to $0.64 for each cruise passenger embarking and $0.64 for each cruise passenger disembarking a Carnival Vessel as that term is defined in the Cruise Terminal Agreement between Carnival and the County dated October 20, 1998 (the "CTA"). Carnival agrees to pay the Facilities Fee during the time specified in the preceding sentence regardless of whether or not the existing Tariff Facilities Maintenance and Improvement Fee sunsets on a prior date. Payment of the fee by

RLP

Carnival shall be made using the same payment procedures implemented under the CTA .

2. Carnival shall, within ten (10) business days of the date this Agreement is executed, pay the County a one-time, lump sum payment of $361,470 in full settlement of any and all lease payments, rent payments, default charges, interest, penalties or similar payments claimed by the County to be due for Carnival's use of office space within Terminals B and C from the date the CTA was executed through June 30, 2007. At such time as Carnival begins operating from the new Terminals D and E, Carnival and County will execute a lease agreement based on approximately 500-600 square feet of space in each of the two terminals. The effective term of this lease agreement will begin the date Carnival moves to Terminals D & E. The initial rental rate for space in Terminals D and E shall be $20 per square foot. Carnival further agrees to abide by and pay any rental rate increases imposed by the County based on appraisals on the lease agreement referenced above as further provided in and in accordance with the terms of said lease agreement. At the time Carnival begins operations at Terminals D & E they will no longer have an exclusive lease space at Terminals B & C.

   In the event said lease for office space at Terminals D & E is not executed by June 30, 2007, or Carnival has not yet begun operating at Terminals D & E, Carnival shall pay the County on a monthly basis for its existing exclusive use of office space at Terminals B & C (1,147 square feet), the present annual rate of $20 per square foot plus any rental rate increases imposed by the County based on appraisals of this property as well as other similar Port properties.

3. The County hereby releases, waives and forever discharges Carnival (including its affiliates) from claims which the County had, now has, or may have against Carnival (including its affiliates) specifically related to the following two issues: (i) any past due rents or lease payments for office space at the Terminals prior to June 30, 2007; and (ii) any fees, penalties or late charges specifically related to the Facilities Maintenance and Improvement Fee imposed by the County on September 20, 2006 as part of its fiscal year 2006-07 budget.

4. Carnival (including its affiliates) and the County hereby release each other, waive and forever discharge each other from any and all known asserted claims, debts, suits, fees, charges, costs and expenses (including attorneys fees) and all interest and penalties, in law, contract or otherwise which such party had, now has, or may have against the other party for actions or inactions prior to December 31, 2006.

5. Within ten (10) business days of the date this Agreement is executed, the County agrees to reimburse Carnival for the cost Carnival previously has incurred in the amount of $39,126 for shuttle service for Carnival passengers, excluding crew, from parking garages and lots on the Port that correspond to terminals from which

Carnival Vessels embark and debark. The County agrees to directly provide shuttle service for Carnival passengers prospectively, excluding crew, from parking facilities on the Port that correspond to terminals from which Carnival Vessels embark and debark.

6. The Parties acknowledge that there is a Request to Advertise for the construction of a new parking garage to provide parking for Terminals D and E that is a separate Board of County Commissioners item traveling with this Agreement, and if the Request to Advertise is approved by the Board, the parking garage shall have a target date for completion of fall 2008. The County agrees to identify a person responsible for expediting progress through the County approval and bid process, and to assign a project manager acceptable to Carnival to manage the development and construction of the garage and will keep Carnival fully involved in the entire process throughout the project.

7. The County guarantees that three (3) Carnival vessels will be berthed simultaneously at Terminals D, E and either B, C or F on every Saturday, commencing in August 2007 through October 2008. To accommodate the three Carnival vessels, the County agrees to complete the necessary gangway adjustments by November 15, 2007.

8. The County and Carnival agree that all references to "Terminals" or to Terminals "8" and "9" within the CTA are amended to refer to the new Terminals D and E once such terminals are completed by the County and Carnival commences operations from said terminals.

9. The parties agree and state that no promise, inducement or agreement not expressly contained herein has been made, and that this Agreement contains the entire agreement between the parties hereto and that the terms of this Agreement are contractual and not a mere recital.

10. 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 proceeding for the enforcement of this Agreement or any provisions hereof shall be instituted only in 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.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed in their respective corporate names by their appropriate officers, and have their respective corporate seals affixed thereto, all as of the date first written above.

BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE
COUNTY, FLORIDA

Reviewed By:

_____
George M. Burgess
County Manager

Approved By:

_____
Honorable Carlos Alvarez
Mayor

ATTEST:
CLERK OF THE COURT

By:_____
Deputy Clerk

_____Approved as to Form
and Legal Sufficiency.

CARNIVAL CORPORATION

By:
Name: Robert H. Dickinson
Title: President + CEO

ATTEST:

By:
Name: Janet L. Simpkins
Title: Exec Assistant to
Bob Dickinson