Memorandum

MIAMI-DADE COUNTY

Date: September 15, 2009

To: Honorable Dennis C. Moss and Members, Board of County Commissioners

Agenda Item No. 14(A)(4)

From: Honorable Carlos Alvarez
Mayor

George M. Burgess
County Manager

Subject: Resolution Authorizing Stevedoring Service Access Agreement between Miami-Dade County and Royal Caribbean Cruises Ltd., authorizing execution of a standard form non-exclusive stevedoring service contract for the benefit of the County's cruise line customers ("Contract"), and waiving formal competitive bids procedures in connection with the accompanying Contract and Stevedoring Service Access Agreement

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RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a Stevedoring Service Access Agreement ("Stevedoring Service Access Agreement") between Miami-Dade County and Royal Caribbean Cruises, Ltd., ("RCCL") authorizing execution of a standard form non-exclusive stevedoring service contract for the benefit of the County's cruise line customers ("Contract"), and waiving formal competitive bid procedures in connection with the accompanying Contract and the Stevedoring Service Access Agreement.

SCOPE

The Port of Miami is located within District 5 – Commissioner 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.

FISCAL IMPACT/FUNDING SOURCE

This item has no fiscal impact to the County. The contracts are revenue neutral to the Port since all expenses incurred as a result of contracting with the stevedoring provider will be billed to the cruise line. An annual administrative/management fee of one-hundred thousand dollars ($100,000) will be assessed by the County to RCCL to recover administrative/management costs incurred by the Port. This fee will be paid to the County in the amount of twenty-five thousand dollars ($25,000) at the close of each fiscal quarter.

TRACK RECORD/MONITOR

With the exception of a disputed charge related to RCCL's reimbursement to the County for the maintenance of their buildings, there are no outstanding issues with Royal Caribbean. Seaport staff is presently addressing the matter.

The Seaport Department staff members responsible for monitoring the Service Agreement and the affiliated Contract(s) will be Juan Kuryla, Deputy Port Director; Kevin Lynskey, Assistant Director, Business Initiatives; and Hydi Webb, Manager of Business Development.

BACKGROUND

On December 2, 2008, the Board approved Resolution No. R-1345-08, which authorized the execution of a Business Settlement Agreement ("Business Agreement") between Miami-Dade County and Royal Caribbean Cruises Ltd., relating to outstanding business issues. Among the terms of the Business Agreement, the Port committed to establish a new service delivery model to include an expanded role in the provision of various mutually agreed-upon services, as well as simplify the RCCL billing process by bundling certain Port costs into a Unitary Fee. This model was agreed to be implemented in the following 3 stages:

Phase 1 – The bundling of existing Port of Miami Terminal Tariff No. 010 charges into a single Unitary Fee (dockage, wharfage, harbor fee, and water). Phase 1 of the Unitary Fee was implemented in January 2009. From its implementation through the end of Fiscal Year 2008/09, this rate was set at $9.86 per embarking and $9.86 per debarking passenger. This rate may be raised to $10.25 per embarking and $10.25 per disembarking passenger for Fiscal Year 2009/10.

Phase 2 - The offering of terminal security as an optional Tariff item with the intent of offering the same service to all cruise lines calling at the Port. On June 30, 2009, the Board authorized the execution of a Security Service Agreement between Miami-Dade County and Royal Caribbean Cruises Ltd. and waiving formal competitive bid procedures in connection with a Terminal Security Service Contract between Miami-Dade County and McRoberts Protective Agency, Inc. The effective date of these contracts is October 1, 2009.

Phase 3 - The establishment of a pool of permitted stevedoring companies from which RCCL may choose its stevedore. Such provision is contingent upon the Board's waiving of competitive bids in connection with approval of the Contract and Stevedoring Service Access Agreement that are both part of this item. The service will be an option offered to all the cruise lines calling the Port.

This agenda item implements Phase 3 of the Unitary Fee whereby, at the request of RCCL, the Port committed to explore different models of providing access to stevedoring services (provided by licensed and permitted stevedoring firms).. Under the terms of the recommended Stevedoring Service Access Agreement, the County shall provide RCCL access to the recommended non-exclusive stevedoring contracts between the County and Port permitted stevedores, through which RCCL will receive stevedoring services. The specific scope of these services, and the rates charged therefore, will be mutually determined by RCCL and its selected stevedore and transmitted to the County via written documents signed by RCCL and its selected stevedore. The scope of potential services may include, but is not limited, to: (i) stevedoring and related labor, (ii) training of such personnel, (iii) baggage handling equipment and labor for the handling of passengers' baggage, (iv) labor for handling vessel lines, (v) labor and equipment for ship provisioning, (vi) labor as required for safety, and (vii) labor and equipment on a special needs basis.

RCCL will provide the County with written notice of its stevedore selection based on, among other factors, stevedore experience, management, company track record, stevedoring equipment, operational plan(s), productivity, efficiency, training, safety, and price. It is anticipated that terminal stevedoring cost for RCCL will be approximately $8.5 million per year. However, as stated in the fiscal impact section of this memorandum, these costs will be passed directly on to the cruise line, plus an annual additional administrative fee of one hundred thousand dollars ($100,000) to cover the Port's administrative costs. Thus, the Seaport does not anticipate incurring additional expenses as a result of the proposed implementation of Phase 3 of the RCCL Business Agreement previously approved by the Board. The effective date of this Service Agreement shall be October 1, 2009. Its term shall be for one (1) year from the effective date with RCCL's option to extend it for up to two (2) additional terms of one (1) year.

As a complement to the execution of the Service Agreement with RCCL, it is also recommended that the Board waives competitive bids and approve of the recommended RCCL Stevedore Service Access Agreement and the standard form Contract with those permitted stevedoring companies desiring to enter into such Contracts with the County. For the Port to enter into a Contract with a stevedoring company, as selected by the cruise line, the stevedoring company must hold a valid stevedoring permit issued by the Port Director pursuant to the requirements of Section 28A-6 of the Code of Miami-Dade County. In compliance with Section 28A-6, the Port conducts a stevedoring permit application process annually every December and permits are issued mid-January of each year. As directed by section 28A-6, the Port Director determines the number of stevedoring permits issued each year, but reserves the right to revise the number should the market change or other Port conditions arise. Stevedoring permits are issued annually based on, among other things, applicant competency, safety record, experience, performance record and history, business volume, and whether the proposed business and operation of applicant are compatible with Port facilities, infrastructure, available land, cargo and/or cruise vessel stevedoring requirements, and efficient Port operations.

The Contracts shall become effective on October 1, 2009 and shall be for one (1) year. The County, at the sole discretion of the County Mayor or his designee, has the option to renew for two (2) additional one (1) year terms. Pricing for all the work in the Contracts will have a per passenger maximum rate of thirty-two dollars ($32.00) or sixteen dollars ($16.00) per embarking passenger and sixteen dollars ($16.00) per debarking passenger. However, the stevedoring contractor may offer incentive discounts off this price to its cruise line customer directly at any time during the Contract period. The final stevedoring rates, and specific scopes of work, will be determined through negotiations between the Contract stevedoring service provider and the cruise lines, subject to the above-stated rate ceiling. During a renewal year only, the contractor may request a percentage increase based on the Consumer Price Index, if applicable for the upcoming year. Participation in the stevedoring services pool will be offered to all cruise lines, subject to execution and approval of similar stevedore service access agreements and obtaining prior Board approval.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specific in the resolution which include the authority for the Mayor or designee to execute the Agreement and to exercise any cancellation and renewal provisions.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: September 15, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 14(A)(4)

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

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

✓ No committee review

✓ Applicable legislation requires more than a majority vote (i.e., 2/3's ✓, 3/5's ____, unanimous _____) 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. 14(A)(4)

9-15-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A STEVEDORING SERVICE ACCESS AGREEMENT BETWEEN MIAMI-DADE COUNTY AND ROYAL CARIBBEAN CRUISES LTD., AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE STANDARD FORM NON-EXCLUSIVE STEVEDORING SERVICE CONTRACTS BETWEEN THE COUNTY AND ANY STEVEDORE HOLDING A VALID STEVEDOIRING LICENSE AND A VALID STEVEDORING PERMIT, ISSUED BY THE COUNTY PURSUANT TO CHAPTER 28A OF THE CODE OF MIAMI-DADE COUNTY, TO PROVIDE (AT THE CRUISE LINE'S OPTION) STEVEDORING SERVICES TO CRUISE LINES OPERATING AT THE PORT OF MIAMI; WAIVING COMEPTITIVE BIDDING REQUIREMENTS IN CONNECTION WITH THE APPROVAL AND EXECUTION OF THE AFOREMENTIONED RCCL STEVEDORING SERVICE ACCESS AGREEMENT AND THE STANDARD FORM NON-EXCLUSIVE STEVEDORING SERVICE CONTRACTS; 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. Authorizes and approves the execution of the Stevedoring Services Access Agreement between Miami-Dade County and Royal Caribbean Cruises, Inc., substantially in the form attached hereto as Exhibit A and made part hereof and to exercise any cancellation and renewal provisions therein.

Section 2. Authorizes and approves the execution of the standard form Non-Exclusive Stevedoring Service Contracts between Miami-Dade County and Port permitted stevedores, after review by the County Attorney's Office, substantially in the form attached hereto as Exhibit B and made part hereof, and to exercise any cancellation and renewal provisions therein.

Section 3. Waives formal competitive bid procedures in connection with the services covered by the Non-Exclusive Stevedoring Service Contracts and also in connection with the conditional right conferred in the RCCL Service Access Agreement allowing RCCL to select its desired stevedore from among the Port permitted stevedores opting to execute standard non-exclusive stevedoring contracts with the County, hereby finding it is in the best interest of the County to waive competitive bidding in these instances, formal bidding being waived by two-thirds (2/3) vote of the Board members present pursuant to Section 5.03(D) of the Home Rule Charter and Section 2-8.1 of the Code of Miami-Dade County.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of September, 2009. 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.

Richard Seavey

EXHIBIT "A"

STEVEDORING SERVICE ACCESS AGREEMENT BETWEEN MIAMI-DADE COUNTY AND ROYAL CARIBBEAN CRUISES LTD.

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between Royal Caribbean Cruises Ltd., a Liberian corporation ("RCCL"), and Miami-Dade County, Florida, a political subdivision of the State of Florida ("County"). RCCL 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 December 30, 1998, the County and RCCL entered into an Amended and Restated Terminal Usage Agreement ("1998 TUA") for an extension to the term of the original Terminal Agreement approved by the Miami-Dade County Board of County Commissioners ("Board") on May 19, 1998 to 15 years; an increase in the incentive off Port Tariff rates for dockage and passenger wharfage to 27% (with a maximum of 29%); and an increase in the minimum revenue guarantee to the County to $160 million over the 15 year term; and

WHEREAS, on December 2, 2008, by Resolution No. R-1345-08 the County and RCCL entered into an Amendment No. 1 to the Amended and Restated Terminal Usage Agreement ("Amendment No.1 to 1998 TUA") in order to change the service delivery model by implementing a "Unitary Fee" inclusive of certain current tariff items; and

WHEREAS, on December 2, 2008, by Resolution No. R-1345-08, the County's Board of County Commissioners approved the Business Settlement Agreement Between Miami-Dade County and Royal Caribbean Cruises Ltd. Related to Outstanding Business Issues (the "Business Agreement") resolving certain outstanding business issues between the Parties; and

WHEREAS, on May 5, by Resolution No. R-538-09, the County's Board of County Commissioners approved the Amendment No. 1 to the Business Settlement Agreement Between Miami-Dade County and Royal Caribbean Cruises Ltd. Related to Outstanding Business Issues (the "Amendment No. 1 to Business Agreement") resolving certain outstanding business issues between the Parties; and

WHEREAS, on June 30, 2009, by Resolution No. R-846-09, the County's Board of County Commissioners approved the Security Service Agreement between Miami-Dade County and Royal Caribbean Cruises Ltd. (the "RCCL Security Agreement"); and

WHEREAS, RCCL currently employs stevedoring companies directly for the provision of stevedoring services to RCCL vessels ("Vessels") calling at the Port; and

WHEREAS, RCCL has requested that the Port provide it with access to certain Port-permitted stevedoring service providers through or utilizing certain proposed non-exclusive County contracts with Port-permitted stevedores, from the date herein until the expiration of the 1998 TUA, as amended;

WHEREAS, RCCL will independently select its desired stevedore from among a pool of licensed and Port-permitted stevedores wishing to service RCCL's vessels calling at the Port of Miami in connection with certain non-exclusive stevedoring service contracts with the County (hereafter, upon RCCL's independent selection and transmission of same by RCCL in writing to the Port, the "RCCL Selected Stevedore" or "RSS");

WHEREAS, upon RCCL selecting its stevedore, RCCL shall negotiate with said stevedore to arrive at a mutually acceptable stevedoring scope of work and the pricing terms therefore, both of which shall be clearly set forth in a written document signed by an authorized representative of RCCL, and subsequently confirmed in writing by the RSS, all in accordance with procedures and terms set forth herein;

WHEREAS, RCCL enters into this Stevedoring Service Access Agreement for the purpose of gaining access to stevedoring services provided by the RCCL Selected Stevedore, acknowledging that the County shall have no duty hereunder to provide any stevedoring services to RCCL, nor will the County have any duty or responsibility hereunder or otherwise to supervise or manage the RCCL Selected Stevedore, or any other stevedore, for the protection or benefit of RCCL or any third parties;

WHEREAS, RCCL acknowledges, agrees and accepts that the County shall have no liability hereunder, or otherwise, to RCCL or any third parties arising out of, in connection with, or relating to, in whole or in part, any performance, lack of performance, act or omission of any RSS and RCCL irrevocably waives and releases the County, its employees, departments, and agents for and from any and all such claims it has or may obtain in the future; and

WHEREAS, the Port is recommending the Board approve the County's entry into non-exclusive contracts with any Port-permitted stevedoring company desiring to enter into such contract with the County (singularly a "Stevedore" or collectively "Stevedores") using the boiler plate non-exclusive contract form submitted for consideration by the Board on the same agenda as this Agreement ("Stevedoring Service Contract" or "SSC") for the provision of stevedoring services to cruise lines (through the County) as requested by the Port's cruise line customers;

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. INITIAL TERM AND EFFECTIVE DATE

The effective date of this Agreement ("Effective Date") shall be October 1, 2009. Subject to the terms and conditions contained herein, the Initial Term of this Agreement shall be for a period of one (1) year from the Effective Date. RCCL shall have the option

to request an extension of this agreement for up to two additional terms of one (1) year upon RCCL providing written notice to the County within one (1) month prior to the termination of the then-existing term. Any extension of this Agreement shall be under the same terms and conditions as in this Agreement.

2. ACCESS TO STEVEDORING SERVICE PROVIDERS

The County agrees to provide RCCL with access to certain Port-permitted stevedoring service providers through and in conjunction with certain non-exclusive stevedoring service contracts between the County and such Port-permitted stevedore(s), written work orders and/or notices detailing the specific scope of stevedoring work to be performed by the RCCL Selected Stevedore for the benefit of RCCL (hereafter, "Services") and the pricing terms therefore ("Pricing") to be negotiated between and approved in writing by RCCL and the RCCL Selected Stevedore and delivered to the County as set forth below, and the terms, conditions, and limitations set forth herein. Once RCCL and the RSS agree on the stevedoring Services and Pricing, RCCL shall immediately provide the County with a signed document setting forth: (i) the identity of RCCL's independently selected stevedore, (ii) the full scope of stevedoring Services to be provided to RCCL by the RSS (as negotiated between RCCL and the RSS), including, without limitation, a list of each vessel for which Services are requested and a vessel deployment schedule for each; and (iii) all Pricing terms applicable to such Services (as agreed upon by RCCL and the RSS), which document shall be executed by a duly authorized representative of RCCL and be in a form acceptable to the County (hereafter, the "RCCL Notice of Selected Stevedore"). The scope of Services may include all or any combination of the following types of stevedoring services to be performed by the RCCL Selected Stevedore for the benefit of RCCL, at the prices agreed upon by RCCL in the RCCL Notice of Selected Stevedore (plus any administrative or other fees or costs due the County hereunder), and under RCCL's supervision:

(a) Provide all necessary stevedoring and related labor, including foremen and such other stevedoring supervision as needed for the proper and efficient conduct of the work during straight-time and/or overtime as authorized or requested by RCCL.

(b) Provide training to foremen and key personnel to ensure a high level of service.

(c) Provide necessary baggage handling equipment and labor including porters to handle/sort passengers' baggage to/from designated places in the cruise terminals at the Port ("Terminals") including through the security screening equipment and to/from Vessels during embarking and disembarking.

(d) Provide labor to handle Vessel lines upon docking and undocking.

(e) Provide labor and necessary equipment to handle the unloading of provisions and/or stores from trucks and loading the provisions and/or stores to Vessel, or vice-versa.

(f) Provide labor as required to safely and effectively provide required

services.

(g) Provide labor and equipment on a special needs basis and/or for special projects as requested by RCCL.

At RCCL's written request and direction, including RCCL's submission to the Port of a RCCL Notice of Selected Stevedore, and upon receipt by the County of clear, unequivocal, and unconditioned written confirmation from the RSS (in a form acceptable to the County) of all information and representations included in the RCCL Notice of Selected Stevedore, the County agrees to direct the RCCL Selected Stevedore to provide the Services described in said RCCL Notice of Selected Stevedore to RCCL, so long as such RSS is contracted to the County to provide such Services. The RCCL Notice of Stevedore Selection shall also contain a statement that RCCL's stevedore selection was based on, among other factors, RCCL's independent investigation and review of said stevedore's experience, competence, track record, equipment, management, productivity, efficiency, training, safety, and price and that said selection was made solely by RCCL without any input or recommendation by the County. RCCL may, at any time during the term of this Agreement, change the RSS to another Port-permitted stevedore possessing a non-exclusive stevedoring contract with the County by providing the County with thirty (30) days prior written notice of such election, which notice shall include all of the information and statements required above and/or in Section 4 of this Agreement, including, without limitation, clear written delineation of the scope of Services and Prices agreed upon between RCCL and its new RSS.

3. RCCL ACKNOWLEDGMENTS

Notwithstanding and prevailing over any contrary term, provision or implication contained herein, RCCL acknowledges, accepts, and agrees to each of the following:

(a) The County has no duty or responsibility hereunder, or otherwise, to provide any stevedoring services to RCCL, to any vessel owned, chartered, or operated by or on behalf of RCCL or any subsidiary or affiliate of RCCL, or to any other cruise line or cruise vessel;

(b) The County has no duty or responsibility hereunder, or otherwise, to manage, supervise, monitor or inspect the provision of stevedoring services by the RCCL Selected Stevedore, any of its employees, agents or subcontractors, or any other stevedore service provider for the benefit of RCCL or any third party; and

(c) The RSS was chosen solely by RCCL in the exercise of its independent discretion and judgment, and without any input or recommendation by the County or any County employee, agent or consultant, and the County has made no warranties or representations herein or otherwise regarding the qualifications, abilities or suitability of the RSS, or any other stevedore, to fulfill the stevedoring requirements of RCCL as set forth in the RCCL Notice of Selected Stevedore or any written confirmation of the Services or Pricing received from the RSS, or to satisfactorily perform any other stevedoring requirements or functions;

(d) Neither the County nor the Port of Miami possess either a County

stevedoring license or a Port of Miami Stevedoring permit; and

(e) The County shall have no liability to RCCL, or to any third party, hereunder or otherwise, which arises from, relates to, or is in connection with any act or omission of the RCCL Selected Stevedore, any of its employees, principals, agents, contractors, or subcontractors (of any tier) or any act or omission of any other Port-permitted stevedore, or its employees, principals, agents, contractors, or subcontractors (of any tier) regardless of whether such acts or omissions are alleged to constitute negligence, recklessness, intentional acts, breaches of any contract or Work Order, misconduct of any kind or nature, or a violation of any federal, state, County, or other law, rule, ordinance, tariff, order or decree.

4. RCCL NOTICE OF SELECTED STEVEDORE

The RCCL Notice of Selected Stevedore, as defined in Section 2 hereof, will not become effective until (i) signed by a duly authorized representative of RCCL, (ii) delivered to the Port's designated Contract Representative by RCCL, which shall be the Port Director or his/her written designee, in a form acceptable to the County, (iii) fully and unconditionally confirmed in writing by the RSS in a form acceptable to the County, (iv) is approved in writing by the Port Director or his/her designee. Once effective, the RCCL Notice of Selected Stevedore can only be modified in writing and such written modification will not become effective unless and until each of the preceding requirements (i) through (iv) of this subsection are met with respect to such modification (including, without limitation, RCCL providing the County with an amended or superseding RCCL Notice of Selected Stevedore). Following the County's receipt of the RSS's written confirmation of the terms set forth in the RCCL Notice of Selected Stevedore, the County shall furnish RCCL with a copy of such confirmation. The County shall have no liability or responsibility hereunder or otherwise in the event RCCL and its RSS fail to mutually agree on the terms of Services or the Pricing therefore, if RCCL is unable to or otherwise fails to provide the County with a RCCL Notice of Selected Stevedore in a form acceptable to the County, or if the RSS is unable to or otherwise fails to deliver to the County clear and unconditional written confirmation of all information and representations contained in the RCCL Notice of Selected Stevedore in a form acceptable to the County, or for any failure of the RSS to perform any services as required or set forth in any RCCL Notice(s) of Selected Stevedore or the RSS's failure to perform any of such Services up to any applicable standard of care.

5. PAYMENT TERMS

Upon the County's receipt of invoices from the RSS providing Services to RCCL, the County shall send an invoice to RCCL for the amount invoiced by such stevedore to the County. The County's invoices to RCCL will detail total charges on a per Vessel, per call basis and include a passenger count on a per Vessel, per call basis. RCCL shall remit full payment to the County of all amounts invoiced within thirty (30) days from receipt of the invoice. An additional annual administrative fee equal to One Hundred Thousand Dollars ($100,000) shall be paid to the County by RCCL on a quarterly basis. Specifically, the Port shall invoice RCCL Twenty Five Thousand Dollars ($25,000) within thirty (30) days of the close of each fiscal quarter, with the first fiscal quarter ending December 31, 2009, and RCCL shall remit full payment to the County of such invoiced administrative fees within thirty (30) days from receipt of the invoice.

6. COMMITMENT ON INDEMNITY AND INSURANCE

(a) RCCL agrees to indemnify and hold the County harmless for any fine or penalty of any kind or in any form whatsoever that is based on action or inaction by RCCL or its affiliates, subsidiaries, employees, contractors, subcontractors or passengers. Further, RCCL 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 (collectively "Claims") to which the County, its agents, officers or employees may be subjected (1) which are caused by or arise out of the acts or omissions of RCCL or its agents, employees, officers or contractors, including without limitation Claims based on negligence, fraud, deceptive and unfair trade practices, deceptive advertising, breach of contract, passenger billing or invoicing, breach of fiduciary duty, intentional torts, or any other type of Claims, or (2) which arise from, are a direct result of, grow out of, or are connected in any way with this Agreement, except to the limited extent such Claims are based solely on the grossly negligent or intentional acts or omissions of the County or its agents, employees, or officers , other than the County's act of entering into this Agreement, taking any actions required of the County hereunder, or entering into any non-exclusive stevedoring contract with any Port permitted stevedore (as contemplated herein). This indemnity obligation shall apply regardless of whether such Claims are against or sustained by others to whom the County, its agents or employees may become liable. Upon request of the County, RCCL shall undertake to defend, at its sole cost and expense (including payment of all legal fees and costs at all levels, including trial and appellate), any and all Claims against the County in connection with the matters specified in this Section.

(b) Indemnification by County. The County does not agree to indemnify RCCL for any Claims to which RCCL, its agents or employees may be subjected (1) which are caused by or arise out of the acts or omissions of any RSS or other Stevedore or either's agents, employees, officers or contractors or (2) which arise from, grow out of, or are connected in any way with either this Agreement or any County Stevedoring Contract.

(c) Insurance Coverage Required. RCCL shall procure and maintain throughout the Term, at its sole cost and expense, insurance coverage as required below. RCCL shall furnish to Seaport Department, 1015 North America Way, Miami, Florida 33132-2081, Certificates of Insurance which name the County as an additional insured and which indicate that the insurance coverage has been obtained which meet the requirements as outlined below:

(i) Workers' Compensation Insurance. Said insurance shall cover all persons employed by RCCL (other than crew members of the Vessels) in and about the Terminal Area including coverage required under the United States Longshore and Harborworkers

Compensation Act (if applicable) and/or as required by Florida Statute 440 or any successor thereto.

(ii) Crew Insurance. Said insurance shall cover all persons employed as crew of the Vessels under a Protection and Indemnity Policy or a Marine Employers Liability Policy to provide coverage for liability under 46 USC Section 688, (The Jones Act) and under General Maritime Law.

(iii) Public Liability Insurance. With respect to the use and activities of RCCL and its employees, contractors, agents, customers and guests in and around the Terminal Area, Public Liability Insurance must be in place on a comprehensive basis in an amount not less than $10,000,000 combined single limits for the death of, or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof, or the activities of RCCL thereon. This coverage must also include but not be limited to embarkation and disembarkation of the Vessels. Miami-Dade County must be shown as an additional named insured with respect to this coverage.

(iv) Pollution Liability Coverage. RCCL shall maintain at its sole cost and expense for Vessels used in connection with this Agreement, operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.

(v) Vessel Liability Insurance (Hull and Machinery). Covering all Vessels used in connection with this Agreement, whether owned or chartered, in an amount not less than $10,000,000 per occurrence for hull and property damage.

(vi) Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with RCCL's operations in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

(d) Insurance Policy Requirements, Generally. Except for Protection and Indemnity Insurance and Hull and Machinery Insurance, all insurance policies required under subpart (c) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County's Risk Management Division, or Companies holding a valid Florida Certificate,

or

as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida

Department of Insurance and which are members of the Florida Guaranty Fund.

Certificates will indicate that no material modification or change in insurance shall be made without thirty (30) days advance notice to the certificate holder.

(e) Injury or Damage, Notification to County. In the event of any injury or damage to persons or property in or around the Terminals, RCCL shall notify the County in writing as soon as reasonably possible after it becomes aware of such injury or damage and shall promptly thereafter furnish to the County copies of all related reports and notices given to RCCL's insurance carrier or carriers.

7. 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.

8. NO ORAL CHANGE OR TERMINATION

This Agreement and the Exhibits and appendices appended hereto and incorporated herein by reference, together with the to-be-executed RCCL Notice of Selected Stevedore (when received and approved in writing by the County), 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. Notwithstanding the foregoing, the Parties acknowledge that the 1998 TUA, as amended, and the RCCL Security Agreement remain in full force and effect, and nothing herein supersedes or amends the 1998 TUA or the RCCL Security Agreement except with respect to the subject matter of this Agreement.

9. COMPLIANCE WITH APPLICABLE LAWS

Throughout the Term of this Agreement, RCCL shall comply with all Applicable Laws relating to this Agreement, RCCL's use of the Terminals and RCCL's use of the Port. Nothing contained herein is intended to exempt RCCL from any otherwise applicable provision of the Port of Miami Tariff No. 10 as same be amended from time to time in the County's discretion.

10. NUISANCE

RCCL shall not commit any nuisance on the Port or in the Terminals or do or permit to be done anything that may result in the creation or commission of a nuisance on the Port or in the Terminals.

11. 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. The County represents that the execution, delivery and performance by County of this Agreement complies with all laws, rules, regulations and orders applicable to County; and that County has full authority to enter into and perform this Agreement in accordance with its terms.

12. NO EXCLUSIVE REMEDIES

No remedy or election given by any provision in this Agreement to the County shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder to the County upon a default of RCCL 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. As to RCCL, its sole and exclusive remedies for any default or breach of this Agreement committed by the County shall be those limited RCCL remedies that are expressly preserved and enumerated in Section 15(b)(i) – (iv) of this Agreement.

13. 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.

14. EVENTS OF DEFAULT

(a) RCCL shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) RCCL fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from RCCL's receipt of written notice from the County of failure to meet such payment obligation.

(ii) RCCL 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, RCCL 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 RCCL shall be adjudicated bankrupt, or if RCCL shall make a general assignment for the benefit of creditors, or if in any proceedings based upon the insolvency of RCCL are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of RCCL which is not dismissed within sixty (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 thirty (30) days after receipt of written notice from RCCL 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 unreasonably interfere with the operations of RCCL 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.

15. REMEDIES UPON DEFAULT

(a) County Remedies Upon RCCL Default. Upon the occurrence of a RCCL default under this Agreement not cured within the applicable grace period, the County may pursue all remedies available at law or in equity, including, without limitation, specific performance of this Agreement.

(b) RCCL's Sole and Exclusive Remedies Upon Default. Notwithstanding and prevailing over any contrary term, provision or implication contained herein, RCCL hereby irrevocably waives, relinquishes and releases all of its current and future remedies, potential remedies, claims, and causes of action, at law or equity, arising from, relating to or in connection with any alleged County breach or default of this Agreement or any County obligation hereunder excluding only the following preserved RCCL remedies, which shall be RCCL's sole and exclusive remedies for any alleged County breach or default of this Agreement:

(i) RCCL may terminate this Agreement for its convenience as provided and in accordance with the terms set forth in Section 23 hereof (Termination for Convenience);

(ii) RCCL may exercise its right to change stevedores hereunder from the RSS to another Port-permitted stevedore possessing a non-exclusive stevedoring contract with the County pursuant to the terms and conditions set forth herein governing an RCCL stevedore selection change;

(iii) RCCL may pursue a claim(s) against any applicable policy of insurance that names RCCL as either a beneficiary or additional insured; and

(iv) RCCL may pursue any viable claim it has, if any, against the RCCL Selected Stevedore, provided, however, that the County is

not joined in such claim and further provided that should the RCCL Selected Stevedore bring or assert a claim, counterclaim, cross-claim or third party claim against the County or any County department, instrumentality, employee, or agent arising or relating to this Agreement or such stevedore's provision of stevedoring services to or on behalf of RCCL or any of its vessels, subsidiaries, affiliates, customers, invitees or guests, then RCCL shall indemnify, hold harmless and defend the County, its employees, departments, instrumentalities and agents therefrom, including, without limitation, the payment of all resulting County losses, damages, and costs, including reasonable legal fees and costs (including appellate).

16. LIMITATIONS ON COUNTY LIABILITY

Notwithstanding and prevailing over any contrary term, provision, or implication container herein, or otherwise, the County shall have no liability to RCCL or any of its invitees, guests, agents, subsidiaries, affiliates or other third parties arising from, relating to or in connection with, in whole or in part:

(a) any act or omission of any RSS or any contractor, subcontractor, agent, employee, principal, guest or invitee thereof; and/or

(b) any alleged failure on the part of the County or any County employee, agent, department or instrumentality to investigate, manage, supervise, train, monitor or inspect the RSS, any of its employees, agents, principals, subsidiaries, affiliates, contractors or subcontractors (of any tier) or any other Port permitted stevedore.

17. NO CONSEQUENTIAL DAMAGES.

Notwithstanding and prevailing over any contrary term, provision, or implication contained herein, or otherwise, under no circumstances shall the County have any liability to RCCL or any of its employees, invitees, guests, customers, agents, subsidiaries, affiliates or other third parties for consequential damages of any type or nature, including, without limitation, lost profits, lost opportunity costs, lost revenues of any kind, or any damages arising from or relating to claims brought against RCCL by third parties.

18. NO DELAY OR TIME RELATED DAMAGES.

Notwithstanding and prevailing over any contrary term, provision, or implication contained herein, or otherwise, the County shall have no liability to RCCL or any of its employees, invitees, guests, agents, subsidiaries, affiliates or other third parties for any delay damages or any other type of time related damages.

19. CAP ON ANY POTENTIAL COUNTY DAMAGES ARISING HEREUNDER

The parties hereto mutually agree that under no circumstances may the County's total and cumulative liability for any damages arising from any and all breaches of this contract by the County, if any, exceed the lesser of the County's Administrative Fee for one year or $100,000, RCCL agreeing to waive any claims it may have or obtain

hereunder against the County for any amounts in excess of such cap.

20. ATTORNEY FEES

In the event an action is commenced by a party resulting from a default under this Agreement, each party shall bear their own attorney fees and costs.

21. CONFLICT OF PROVISIONS

If there is any conflict between the provisions of this Agreement and either the 1998 TUA, as amended, or the provisions of an addendum, schedule, exhibit, and/or purchase order attached to this Agreement, or the RCCL Security Agreement or any amendment thereto, the provisions of this Agreement shall prevail with respect to the subject matter hereof.

22. FORCE MAJEURE; INABILITY TO PERFORM

County and RCCL shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond the reasonable control of the County, RCCL, and their agents, employees, contractors, subcontractors, and guests including, without limitation acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type (whether affecting County, RCCL, its contractors or subcontractors), providing that the party claiming the existence of a force majeure event delivers written notice to the other party of such event within fifteen calendar days of the commencement of such event. Notwithstanding and prevailing over the foregoing, nothing contained in this section 22 shall apply to, or relieve RCCL from, any of its payment, indemnity, hold harmless, and duty to defend obligations contained in this Agreement.

23. TERMINATION FOR CONVENIENCE

In addition to cancellation or termination as otherwise provided in this Agreement, either party may at any time, in its sole discretion, with or without cause, terminate this Agreement by thirty (30) days written notice to the other party. In such event RCCL shall pay all outstanding invoices to the County for Services performed through the effective date of the termination.

24. 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.

25. ASSIGNMENT

The term of this Agreement shall inure to the exclusive benefit of RCCL and is binding upon RCCL. RCCL will not transfer, assign or pledge this Agreement or any rights hereunder without the prior written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, RCCL may transfer, assign or

pledge this Agreement to an affiliate owned or controlled by RCCL without consent upon written notice to County, provided, however, that the intended (RCCL affiliate or subsidiary) recipient of such assignment, transfer or pledge first provides an unqualified written assumption of all RCCL's payment and other obligations hereunder to the County stating that it will be jointly and severally responsible for all of such RCCL obligations to the County hereunder along with RCCL. For the purposes of this Agreement, an assignment shall not be deemed to occur upon a transfer of stock or interest in RCCL among its current shareholders.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties, but RCCL's obligations under Section 6 (Commitment on Indemnity and Insurance) of this Agreement shall also remain in full force and shall remain binding on RCCL after any assignment by RCCL, unless the County has consented in writing to such assignment.

26. OBLIGATIONS SURVIVING TERMINATION HEREOF

Notwithstanding and prevailing over any contrary term or provision contained herein, including any early termination rights contained herein, in the event any party hereto exercises any lawful termination rights herein, or in the event this Agreement expires in accordance with its terms, the following obligations shall survive such termination or expiration (as the case may be) and continue in full force and effect until the expiration of a five (5) 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 or expiration (as applicable); (ii) any and all indemnity, hold harmless, and duty to defend 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.

27. LACK OF AGENCY RELATIONSHIP

Nothing contained herein shall be construed as establishing an agency relationship between the County and RCCL and neither RCCL 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 RCCL or its subsidiaries, divisions or affiliates.

28. NOTICES

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by United States Registered or Certified Mail, return receipt requested, postage prepaid, 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 a United States legal holiday.

FOR COUNTY:	Bill Johnson Director, Seaport Department Miami-Dade County 1015 North America Way Miami, Florida 33132-2081 Telephone Number: 305-371-7678 Telecopy Number: 305-347-4852
with a copy to:	County Attorney 111 Northwest 1st Street Suite 2810 Miami, Florida 33128 Telephone Number: 305-375-5151 Telecopy Number: 305-375-5634
FOR RCCL:	Royal Caribbean Cruises Ltd. 1050 Caribbean Way Miami, FL 33132 Attention: Vice President, Port Operations Telephone Number: 305-539-6778 Telecopy Number: 305-436-4159
with a copy to:	Royal Caribbean Cruises Ltd. 1050 Caribbean Way Miami, Florida 33132 Attention: General Counsel Telephone Number: 305-539-6631 Telecopy Number: 305-539-0562

29. COUNTERPARTS

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement. For purposes of the preceding sentence, a legible facsimile of a properly executed and delivered counterpart shall be acceptable.

30, DESIGNATION OF RCCL'S AUTHORIZED REPRESENTATIVE

Within ten (10) calendar days of the execution of this Agreement, RCCL shall provide the Port Director with written notice of the RCCL officers or employees duly authorized by RCCL to approve and execute Work Orders and RCCL Notice(s) of Selected Stevedore on RCCL's behalf and who are otherwise authorized by RCCL to make decisions regarding this Agreement for and on behalf of RCCL. Such authority shall remain in full force and effect unless and until revoked by RCCL via written prior notice to the Port Director which notice shall clearly identify the replacement RCCL authorized representative(s) hereunder.

IN WITNESS WHEREOF, the parties have caused this document to be executed by their duly authorized officers.

Signed, sealed and delivered
in the presence of:

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

By:_____
George M. Burgess
County Manager

Approved as to legal form and sufficiency

_____
Assistant County Attorney

ATTEST:
CLERK OF THE BOARD

By:_____
Deputy Clerk

Signed, sealed and delivered

ROYAL CARIBBEAN CRUISES LTD.

ATTEST:
X_____
Dustin Nason
By Manager, Worldwide Port Operations
Guest Port Services

By: Adam M. Goldstein
Name: _____
Title: _____
Adam M. Goldstein
President & CEO
Royal Caribbean International
LEGAL

EXHIBIT "B"

NON-EXCLUSIVE STEVEDORING SERVICE CONTRACT FOR THE BENEFIT OF COUNTY CRUISE LINE CUSTOMERS

THIS NON-EXCLUSIVE STEVEDORING SERVICE CONTRACT FOR THE BENEFIT OF COUNTY CRUISE LINE CUSTOMERS ("Contract") made and entered into as of this _____ day of _____ by and between _____ (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

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, the County has cruise line customers who have vessels which call at the Port, and which require Stevedoring services when they call at the Port; and

WHEREAS, some of the cruise lines have requested that the County provide them with a pool of stevedoring companies contracted to the County to provide stevedoring services to their vessels; and

WHEREAS, the Contractor has a valid license issued to it by the County, pursuant to Section 28A-6 of the Code of Miami-Dade County, to perform stevedoring services within Miami-Dade County ("License"); and

WHEREAS, the Contractor has a valid Stevedoring permit issued to it by the County, pursuant to Section 28A-6 of the Code of Miami-Dade County, to perform stevedoring services at the Port ("Permit"); and

WHEREAS, the County has neither a Permit nor a License; and

WHEREAS, the Contractor has offered to provide and undertakes to furnish stevedoring services to the Cruise Lines at the agreed rates and upon the terms and conditions specified as follows; and

WHEREAS, the County seeks to have the Contractor provide stevedoring services to the Cruise Lines at the agreed rates and upon the terms and conditions specified as follows.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Contract shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions and all associated addenda and attachments, including, but not limited to, the Affidavits and forms required to be completed by Contractor pursuant to Article 30 herein, Work Order Confirmations as provided below, Notices of Selected

Stevedores as provided below, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Contract is effective.

c) The word "Contractor" to mean _____.

d) The word "Cruise Line" or "Cruise Lines" means those County cruise line customers who have entered into agreements with the County by which the Cruise Line seeks to access this agreement as a third party beneficiary in order to procure stevedoring services for its vessels ("Vessels") calling at the Port.

e) The word "Days" to mean Calendar Days.

f) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Port Director, or his designee, and/or a Cruise Line; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Port Director, or his designee, and/or Cruise Line.

g) The words "Scope of Services" to mean the scope of services set forth in Article 3 of this Contract below, which details the work to be performed by the Contractor.

h) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

i) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract, a Work Order Confirmation, and Notice of Selected Stevedore.

j) The term "Work Order Confirmation" means a written confirmation by the Contractor delivered to the Port Director or his designee accepting the Notice of Selected Stevedore executed by a Cruise Line specifying the scope of stevedoring work to be performed by Contractor and the pricing for those services after negotiation of the scope of services and pricing between the Contractor and Cruise Line as described further in Article 3 below.

ARTICLE 2. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Contract unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Contract.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 3. SCOPE OF SERVICES

The Contractor acknowledges that the Cruise Lines are third party beneficiaries of this Agreement, and Contractor agrees to provide to the Cruise Lines stevedoring services pursuant to Notice(s) of Selected Stevedore and Work Order Confirmation(s) which may include the following described services, as requested and directed by the Cruise Lines for Vessels calling at the Port:

(a) Provide all necessary stevedoring and related labor, including foremen and such other stevedoring supervision as needed for the proper and efficient conduct of the work during straight-time and/or overtime as authorized or requested by a Cruise Line.

(b) Provide training to foremen and key personnel to ensure a high level of service.

(c) Provide necessary baggage handling equipment and labor including porters to handle/sort passengers' baggage to/from designated places in the cruise terminals at the Port ("Terminals") including through the security screening equipment and to/from Vessels during embarking and disembarking.

(d) Provide labor to handle Vessel lines upon docking and undocking.

(e) Provide labor and necessary equipment to handle the unloading of provisions and/or stores from trucks and loading the provisions and/or stores to Vessel, or vice-versa.

(f) Provide labor as required to safely and effectively provide required services.

(g) Provide additional services, labor and equipment as requested by the Cruise Line.

In the event a Cruise Line selects Contractor to provide services, the Cruise Line and Contractor shall negotiate the precise scope of services to be provided ("Services"), the Vessel(s) or Vessel classes for which Services are to be performed, the deployment schedule for each Vessel for which the Services are to be performed, and the Price (as defined in Article 7). The terms agreed upon shall be stated in writing shall be signed by a duly authorized representative of the Cruise Line (hereinafter "Notice of Selected Stevedore") and which shall be in a form acceptable to the County. The County will provide the Notice of Selected Stevedore to Contractor, and a duly authorized representative of the shall execute a form acceptable to the County accepting all the terms stated in the Notice of Selected Stevedore ("Work Order Confirmation"). The Notice(s) of Selected Stevedore and Work Order Confirmation shall be attached hereto and incorporated herein. There shall be no addition to, or change in, the scope of Services or Price in a Notice of Selected Stevedore or Work Order Confirmation without the execution of a superseding Notice of Selected Stevedore by the Cruise Line and a superseding Work Order Confirmation.

ARTICLE 4. NATURE OF THE AGREEMENT

a) This Contract, including any Work Order Confirmations, Notices of Selected Stevedore, and any agreements between the County and any Cruise Lines pertaining to the subject

matter of this Contract, incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Contract. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Contract that are not contained in this Contract, the Work Order Confirmations, Notices of Selected Stevedore, or any agreements between the County and any Cruise Lines pertaining to the subject matter for this Contract, and that this Contract, the Work Order Confirmations, Notices of Selected Stevedore, and any agreements between the County and any Cruise Lines pertaining to the subject matter of this Contract contain the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Contract shall be of no force or effect, and that this Contract and any Work Order Confirmations or Notices of Selected Stevedore may be modified, altered or amended only by a written amendment duly executed by the parties thereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County and Cruise Lines in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Contract requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract, the Work Order Confirmations, and Notices of Selected Stevedore. All things not expressly mentioned in this Contract but necessary to carrying out its intent are required by this Contract, and the Contractor shall perform the same as though they were specifically mentioned, described and/or delineated.

d) The Contractor shall furnish all labor, equipment, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the Cruise Lines and the Port Director or his designee.

e) The Contractor acknowledges that the Cruise Lines shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the Cruise Lines once a Work Order Confirmation and Notice of Selected Stevedore as described in Article 3 above are executed. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the Cruise Lines with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on October 1, 2009 or on the date that the Contract is executed by both the County and Contractor, whichever occurs later, and shall be for one (1) year. The County, at the sole discretion of the County Mayor or his designee, reserves the right to exercise the option to renew this Contract for a period for two (2) additional one (1) year terms. The County Mayor or his designee shall provide written notice to the Contractor at least fifteen (15) days prior to the expiration of the term of this Contract if the County decides to exercise the option to renew the Contract.

Notwithstanding the foregoing or anything else in this Contract, this Contract shall terminate immediately if at any time the Contractor does not have both a valid Stevedoring License and a valid Stevedoring Permit. Nothing contained in this Contract shall be interpreted or construed in

any way to obligate, require, affect, or otherwise provide in any way that the County shall or will renew the Contractor's License or Permit. The validity of such License and such Permit shall at all times be subject solely to the revocation, suspension, non-renewal, denial and all other provisions of Section 28A-6 of the Code of Miami-Dade County, and any other applicable federal, state or local law or regulation.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Contract shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) To the County

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

(2) To the Contractor

Contractor Name:_____
ATTN:_____
Address:
_____
_____
Tel_____
Fax:_____

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed all requirements, has asked such questions and has conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall not exceed a total per passenger cost of $32.00 ($16.00 per embarking passenger or $16.00 per disembarking passenger) from a cruise Vessel calling at the Port of Miami ("Price"). The actual Price shall depend on the class of vessel and the number of passengers per voyage and shall be negotiated by the Contractor with each Cruise Line for which Contractor is providing the Services, but shall not exceed the total per passenger cost stated above. The agreed upon Price shall be stated in each of the Work Order Confirmations and Notices of Selected Stevedore to be attached to this Agreement.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods.

Notwithstanding the Price stated in Article 7 of this Contract, the Contractor may offer incentive discounts off of the Price to the Cruise Lines at any time during the Contract term, including any

renewal or extension thereof, in order for the Contractor to perform Services for the Cruise Lines or Vessels. The Contractor shall confirm such discount in the Work Order Confirmation(s) delivered to the County prior to performing Services. Nothing herein shall permit or allow the Contractor to provide stevedoring services at a price higher than the Price stated in Article 7.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Contract, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor shall bill the County on a weekly basis covering a Monday – Sunday period, upon invoices certified by the Contractor pursuant to the Pricing provisions above. The invoices shall be submitted to the County no later than ten (10) calendar days following the billing period ending Sunday. For example, for all invoices covering the time period of Monday, May 4, 2009 – Sunday, May 10, 2009 sailings, Contractor shall invoice the County no later than Wednesday, May 20, 2009. Invoices shall be itemized by date of the ship call, name of Vessel on a per call basis. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Notwithstanding the foregoing, Contractor acknowledges that the County will be invoicing the Cruise Line(s) for the Services rendered pursuant to this Agreement and the applicable Work Order Confirmation and Notice of Selected Stevedore, and that the funds to be utilized by the County to pay the invoices from Contractor will be funds received by the County from the Cruise Line(s) for which Services were provided pursuant to a Work Order Confirmation and Notice of Selected Stevedore. Accordingly, Contractor acknowledges that receipt of payment by the County from the Cruise Line is a condition precedent to the right of Contractor to receive payments under this Agreement and therefore no funds will be owed to Contractor unless and until the County is paid by the Cruise Line for Services rendered by the Contractor to the Cruise Line.

Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County Seaport Department
1015 North America Way, Suite 200
Miami, FL 33132
Attention: Miriam Abreu

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

a) The Contractor shall defend, indemnify and hold harmless the County, and/or any Cruise Lines for which Services are provided, and their respective officers, employees, agents and instrumentalities (the "Indemnitees") from any and all liability, losses, damages, or notices of statutory or regulatory violation, including attorneys' fees and costs of defense, which the Indemnitees or their officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Indemnitees, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Indemnitees or their officers, employees, agents and instrumentalities as herein provided.

b) Upon County's notification, the Contractor shall furnish to the Seaport and the Department of Procurement Management, Certificates of Insurance which list the County and any Cruise Line for which Services are provided as additional insureds, and which indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Section 440, Florida Statutes.

2. To the extent applicable, insurance shall include coverage for the U.S. Longshore and Harbor Worker's Compensation Act. Employer's Liability will have limits of not less than $5,000,000.

3. Insurance for all losses as a result of Contractor's breach of duty to use best efforts to secure and protect the Port's property, including non-owned property in the care custody and control of the Port or any user of the Port including, but not limited to, the Cruise Lines and their passengers. Insurance shall include coverage for false arrest, detention or imprisonment, assault and battery, violation of privacy, slander and libel, use of firearms. The policy will have liability limits of not less than $5,000,000 combined single limits for bodily injury, personal injury and property damage for each occurrence, and will include coverage for exemplary or punitive damages, except in jurisdictions that do not exempt or allow all punitive damages to be insured.

4. Public Liability Insurance on a comprehensive basis including Contractual Liability, Products Liability and Completed Operations coverage in an amount not less than $5,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County and the Cruise Line(s) for which Services are performed must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

5. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Contract.

Award of this Contract and performance of any Services is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after execution of this Contract or a Work Order Confirmation and Notice of Selected Stevedore, or before any Services are performed, whichever occurs first. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Contract, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County and Cruise Line(s), but in no event shall Services be performed prior to submission of such documents. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Contract within twenty (20) calendar days after execution of this Contract or a Work Order Confirmation, the Contractor shall be in default of the contractual terms and conditions and this Contract shall be terminated immediately, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that

this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract. In no event shall Services be performed prior to submission of certificates showing that the required insurances are effective for the time period of performance of Services.

ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the Cruise Lines and the County in accordance with the terms and conditions of this Contract. The Cruise Lines and County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the Cruise Lines and/or the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and Cruise Lines and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County or a Cruise Line, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County or a Cruise Line. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent personnel to meet the requirements to which reference is hereinafter made. Subject to the terms of any collective bargaining agreements Contractor may have with its personnel, the Contractor agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the County or a Cruise Line, should the County or a Cruise Line make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and Cruise Lines and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Contract.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County or a Cruise Line may require the Contractor to remove an employee deemed careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of

the County. Each employee must have a valid class D license issued by the Florida Department of Agriculture, a valid Port ID issued the Port of Miami, and a valid Transportation Worker Identification Credential (TWIC) issued by the Transportation and Security Administration prior to employment.

ACCIDENT PREVENTION AND REGULATIONS AT THE SEAPORT DEPARTMENT

All operations at the County's Seaport Department are under the direct control of Seaport Department personnel. Interference with vessels and vehicular traffic must be kept to a minimum. Ship berthing areas and roadways shall not be closed or opened by or for the vendor unless express permission is given to the vendor by the Seaport Engineer. The vendor shall plan the scheduling of its work in collaboration with the Engineer in order to insure safety for, and minimum hindrance to, port operations. All equipment shall be withdrawn from work areas at the end of the workday in order to eliminate immediate or potential hazard to traffic and facilities. Materials stored at the Seaport by the vendor shall be stored in a manner that minimizes any obstruction to water and ground traffic. All equipment and stored materials shall be marked by barriers with flashing lights at no additional cost to the County. The County accepts no responsibility for any damage or loss to materials stored by the vendor. The vendor shall exercise careful control during all phases of the work to prevent damage to Seaport utilities; including, but not limited to, overhead lights and buried cables. Before commencing work in any given area, the vendor, working in conjunction with the Engineer and the Dade County Seaport Department maintenance staff, shall endeavor to locate any possible utility conflicts. Should the vendor damage any Seaport utility through negligence, it shall promptly repair the damage at its own expense.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Contract, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Contract.

ARTICLE 14. AUTHORITY OF THE CRUISE LINES

a) The Contractor hereby acknowledges that a Cruise Line requesting stevedoring services pursuant to a Notice of Selected Stevedore and Work Order Confirmation will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, the performance of those Services for such Cruise Line pursuant to this Contract, a Work Order Confirmation and Notice of Selected Stevedore including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to the effective date of the Contract; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all terms of this Contract, a Work Order Confirmation and Notice of Selected Stevedore and shall promptly obey and follow every Notice of Selected Stevedore and Work Order provided by the Cruise Line requesting Services,

including the written withdrawal or modification of any previous Notice of Selected Stevedore or Work Order Confirmation and regardless of whether the Contractor agrees with the Notice of Selected Stevedore or Work Order Confirmation.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Contract with the Port Director or his designee and the Cruise Line. In the event that the Contractor, Port Director or his designee, and the Cruise Line are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Contract authorize the County Manager or designee, who may not be the Port Director or his designee, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Contract (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Services meets the requirements of this Contract and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Contract. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Contract, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

a) Nothing in this Contract shall be construed for the benefit, intended or otherwise, of any third party, other than the Cruise Lines, that is not a parent or subsidiary of a party or Cruise Line or otherwise related (by virtue of ownership control or statutory control) to a party or Cruise Line.

b) In those situations where this Contract imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Contract for a period of five (5) years from the expiration date of this Contract and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of five (5) years after the expiration of this Contract and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Contract.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 19. SUBCONTRACTUAL RELATIONS

a) The Contractor shall not cause any part of this Contract to be performed by a Subcontractor without the written consent of the Seaport Director. If such consent is given, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Contract relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County and the Cruise Line(s) that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a

satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County and the Cruise Line(s) that it has satisfactorily performed services of the same general type which is required to be performed under this Contract.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Contract. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County and the Cruise Line(s) copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 20. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 21. SEVERABILITY

If this Contract contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Contract without affecting the binding force of this Contract as it shall remain after omitting such provision.

ARTICLE 22. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

a) The County may terminate this Contract if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.

In addition to cancellation or termination as otherwise provided in this Contract, (1) the County may at any time, in its sole discretion, with or without cause, terminate this Contract and/or any of the Work Order Confirmations by written notice to the Contractor and in such event:

d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:

   i. stop the affected Work and Services on the date specified in the notice ("the Effective Termination Date");

   ii. take such action as may be necessary for the protection and preservation of the materials and property of the Count and/or Cruise Line;

   iii. cancel orders;

   iv. assign to the Cruise Line(s) and deliver to any location designated by the Cruise Line(s) any noncancelable orders for Deliverables that are not capable of use except in the performance of this Contract and has been specifically developed for the sole purpose of this Contract and not incorporated in the Services:

   v. take no action which will increase the amounts payable by the County and/or Cruise Line under this Contract; and

e) In the event that the County exercises its right to terminate this Contract pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:

   i. portion of the Services completed in accordance with the Contract up to the Effective Termination Date; and

   ii. noncancelable Deliverables that are not capable of use except in the performance of this Contract and has been specifically developed for the sole purpose of this Contract but not incorporated in the Services.

f) All compensation pursuant to this Article are subject to audit.

ARTICLE 23. <u>EVENT OF DEFAULT</u>

a) An Event of Default shall mean a breach of this Contract by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

   i. the Contractor has not provided Services on a timely basis.

   ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

   iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

   iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the County or Cruise Line(s) where required by this Contract;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County and/or Cruise Line(s), reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Contract. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Contract;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Contract for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 24. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Contract with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the reasonable satisfaction of the County and Cruise Line(s) within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the rights of the County and/or Cruise Line(s) hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County and/or Cruise Line(s) prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 25. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages to the County and Cruse Lines resulting from the default, including but not limited to:

a) lost revenues including ticket and onboard revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County and Cruise Lines may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 26. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Services furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County and or Cruise Line(s) for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Services Work, or the continued use of the Services furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and/or Cruise Line(s) and defend any action brought against the County and/or Cruise Line(s) with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Services or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the option of the County and Cruise Line(s) to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Contract to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County and Cruise Line(s) whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Services hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County and Cruise Line(s) may reject any Services that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Services.

ARTICLE 27. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Contract. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
(Section 2-8.1 of the County Code)

2. ***Miami-Dade County Employment Disclosure Affidavit***
(Section 2.8-1(d)(2) of the County Code)

3. ***Miami-Dade Employment Drug-free Workplace Certification***
(Section 2-8.1.2(b) of the County Code)

4. ***Miami-Dade Disability and Nondiscrimination Affidavit***
(Section 2-8.1.5 of the County Code*)*

5. ***Miami-Dade County Debarment Disclosure Affidavit***
(Section 10.38 of the County Code)

6. ***Miami-Dade County Vendor Obligation to County Affidavit***
(Section 2-8.1 of the County Code)

7. ***Miami-Dade County Code of Business Ethics Affidavit***
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)

8. ***Miami-Dade County Family Leave Affidavit***
(Article V of Chapter 11 of the County Code)

9. ***Miami-Dade County Living Wage Affidavit***
(Section 2-8.9 of the County Code)

10. ***Miami-Dade County Domestic Leave and Reporting Affidavit***
(Article 8, Section 11A-60 11A-67 of the County Code)

11. ***Subcontracting Practices***
(Ordinance 97-35)

12. ***Subcontractor /Supplier Listing***
(Section 2-8.8 of the County Code)

13. ***Environmentally Acceptable Packaging***
(Resolution R-738-92)

14. ***W-9 and 8109 Forms***
(as required by the Internal Revenue Service)

15. ***FEIN Number or Social Security Number***
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
   - Identification of individual account records
   - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
   - Tax reporting purposes
   - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. ***Office of the Inspector General***
(Section 2-1076 of the County Code)

17. ***Small Business Enterprises***
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. ***Antitrust Laws***
By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, to first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Contract voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 28. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the

Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Contract for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Contract. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's

possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 29. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Contract, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 “Debarment”.

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Contract, Contractor shall not be required pursuant to this Contract to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 30. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital

status, age, sexual preference, or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 31. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Contract.

b) There are no undisclosed persons or entities interested with the Contractor in this Contract. This Contract is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Contract, or in the services, supplies or work, to which this Contract relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Contract; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Contract and those provided by statute, the stricter standard shall apply.

f) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the

attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 32. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 33. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 34. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to its conflict of laws provisions. The County and Contractor agree that any action to enforce this Contract shall be brought only in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida or the United States District Court for the Southern District of Florida.

ARTICLE 35. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;

4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 36. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Contract are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 37. SURVIVAL

The parties acknowledge that any of the obligations in this Contract will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Contract, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 38. NON-EXCLUSIVITY AND NON-GUARANTY

The parties acknowledge that this Contract is non-exclusive and that the County reserves the right to contract with other persons or entities to provide some or all of the services provided in this Contract.

The parties further acknowledge that neither the County nor any Cruise Line is obligated in any way to request or direct the Contractor to perform any Services for the County or a Cruise Line. Neither the County nor any Cruise line is obligated in any way to sign or provide any Work Order Confirmation, or to make any payment to the Contractor unless a Cruise Line, with the approval of the County, issues a Notice of Selected Stevedore, provides a Work Order Confirmation signed by the Contractor to the County, and the Services are rendered in accord with and pursuant to such Notice of Selected Stevedore and Work Order Confirmation, and in accord with the terms of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract effective as of the contract date herein above set forth.

Contractor:	Miami-Dade County
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
Attest: _____ Corporate Secretary/Notary Public	Attest: _____ Clerk of the Board
Corporate Seal/Notary Seal	Approved as to form and legal sufficiency _____ Assistant County Attorney