Memorandum

MIAMI-DADE COUNTY

Date: December 15, 2009

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

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

From: Honorable Carlos Alvarez
Mayor

George M. Burgess
County Manager

Subject: Resolution authorizing Stevedoring and Security Service Access and Unitary Invoice Agreement between Miami-Dade County and NCL (Bahamas) Ltd. ("NCL"); authorizing a non-exclusive Security Service Contract between Miami-Dade County and American Guard Services, Inc.; and waiving competitive bidding in connection with the approval and execution of the aforementioned Security Service Contract with American Guard, Inc., and in connection with the Stevedoring and Security Access and Unitary Invoice Agreement.

RECOMMENDATION

It is recommended that the Board approve the accompanying Resolution authorizing a Stevedoring and Security Service Access and Unitary Invoice Agreement ("Agreement") between Miami-Dade County and NCL (Bahamas) Ltd. ("NCL"); authorizing a non-exclusive Security Service Contract between Miami-Dade County and American Guard Services, Inc.; and waiving competitive bidding in connection with the approval and execution of the aforementioned Security Service Contract with American Guard, Inc., and in connection with the Stevedoring and Security Access and Unitary Invoice 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 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 and security providers will be billed to the cruise line. To defray administrative expenses which will be incurred by the Port, an administrative fee in the amount of seven-hundred and fifty dollars ($750) per vessel call will be assessed by the County to NCL which shall total no less than one-hundred fifty thousand dollars ($150,000) nor exceed two-hundred thousand dollars ($200,000) in any single fiscal year.

TRACK RECORD/MONITOR

There are no outstanding business issues or financial obligations between the parties.

The Seaport Department staff members responsible for monitoring the Agreement and the affiliated contracts are Juan Kuryla, Deputy Port Director; Kevin Lynskey, Assistant Director, Business Initiatives; and Hector Pesquera, Assistant Director, Safety and Security.

BACKGROUND

NCL has been at the Port of Miami for 43 years. They currently have the youngest fleet in the industry with 11 cruise ships and construction underway of its new third generation Freestyle ship, Norwegian Epic, which will be homeported year-round in Miami beginning summer 2010.

On December 16, 2008, the Board approved Resolution No. R-1442-08, which authorized the execution of a Cruise Terminal Agreement between Miami-Dade County and NCL (Bahamas), Ltd. Among the provisions of this agreement was reference to the County's future offering of, or access to, certain additional services for which NCL would pay the County.

The attached Stevedoring and Security Access and Unitary Invoice Agreement is largely consistent with recently approved Board resolutions authorizing similar agreements between the County and Royal Caribbean Cruises, Ltd. ("RCCL"), R-846-09 and R-1128-09. The agreements with both NCL and RCCL provide for terminal security services and access to Port permitted stevedores along with modifications to the billing processes. While the accompanying resolution waives formal bidding procedures in connection with security services in order to continue use of the existing NCL and RCCL security service providers, all future security providers will be selected competitively through a County pool via an RFP(Q) process. The accompanying resolution also waives formal competitive bidding procedures to allow NCL to select stevedores from an anticipated pool of stevedoring companies permitted by the Port (per Chapter 28-A of the Code of Miami-Dade County) that elect to opt in to the process and execute a non-exclusive model stevedoring contract with the County.

A description of the NCL stevedoring, security, and billing procedures follows below:

Stevedoring Services

Among the terms, the County will provide NCL with access to those port-permitted stevedore companies who elect to enter into a boiler-plate non-exclusive stevedoring contract with the County in a standard form previously approved by the Board on September 15, 2009, via Resolution No. R-1128-09. The specific scope of stevedoring services, and the rates charged, will be mutually determined by NCL and its selected stevedore and transmitted to the County via written documents by NCL and its selected stevedore. The scope of 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 special needs basis. NCL 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 plans, productivity, efficiency, training, safety, and price.

Security Services

Also among the terms of this Agreement, the County shall provide terminal security through a contracted security provider. Currently, NCL employs American Guard Services directly for terminal security services to, among other functions, screen their passengers, crew, vendors, contractors, other cruise line employees or guests and screen all provisions as they are processed through the Port of Miami cruise terminals.

The County will provide, through a security provider, services which include, but are not limited to: (i) terminal access control for passengers, crew members, vendors, contractors, or other cruise line employees or guests, (ii) security screening of all persons and their belongings who board the vessel via the passenger gangway, (iii) security screening of passenger baggage, and (iv) screening of vessel provisions using canine services. Required equipment and personnel shall be provided in compliance with each terminal's Facility Security Plan.

Toward this end, we are recommending to the Board the approval of the Security Service Contract with American Guard Services pursuant to a bid waiver (similar to the Security Service Contact with McRoberts Security for RCCL via Resolution R-846-09). Such contract is also being submitted to the Board for consideration under this same resolution. The continued use of American Guard for the current year is the most efficient, uninterrupted and seamless manner of providing requested security services to NCL. It is

important to note this is an interim process, as the Port is currently working with the Department of Procurement Management to establish a pool of qualified security providers via a County competitive process. The proposed Security Service Contract with American Guard Services shall become effective January 1, 2010 and shall be for one (1) year. The County, at its sole discretion, has the option to renew for two (2) additional one (1) year terms. Pricing shall remain fixed for the term of the Contract, including any renewal options, except for yearly percentage increases consistent with increases in the wages provided for by the Living Wage Ordinance, Section 2-8.9 of the Miami-Dade County Code, that will be applied to the classifications that are billed to the County at the hourly rates specified.

Once the competitive selection process is completed, and the successor contract is awarded and commenced, this contract with American Guard will no longer be in effect. Participation in this security services pool will be offered to all cruise lines wanting to enter into a similar type of arrangement.

Unitary Invoice
This Agreement differs from RCCL in that NCL will be invoiced for all stevedoring, security, and Port Tariff items in a per vessel call Unitary Invoice. RCCL is currently being billed by the Port two separate invoices: one invoice for Port Tariff items (e.g. dockage, wharfage, harbor fee, and water charges) on a per vessel, per call basis and second invoice for security charges on a per vessel, per call basis. RCCL's annual administrative fee is paid to the County on a quarterly basis.

Specifically in this agreement, the Port will bill NCL via a Unitary (comprehensive) Invoice containing separate Port Tariff items, stevedoring service charges, security service charges, plus an administrative fee on a per vessel call basis. The administrative fee, as outlined in the Fiscal Impact Section of this memorandum, will be seven-hundred fifty dollars ($750) per vessel call, provided that the sum of the fee paid to the County in any single fiscal year be no less than one-hundred fifty thousand dollars ($150,000) or greater than two-hundred thousand dollars ($200,000) with the exception of the first year of this Agreement during which the administrative fee will be prorated.

The effective date of this Agreement shall be January 1, 2010 and shall be for three (3) years. NCL shall have the sole option to extend the Agreement for up to two (2) additional terms of one (1) year each. However, the agreement may be terminated by either party without cause upon thirty (30) days written notice.

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: December 15, 2009

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

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

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. 8(Q)(1)(A)
12-15-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A STEVEDORING AND SECURITY SERVICE ACCESS AND UNITARY INVOICE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND NCL (Bahamas), LTD. ("NCL"); AUTHORIZING THE COUNTY MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE A NON-EXCLUSIVE SERCURITY SERVICE CONTRACT BETWEEN MIAMI-DADE COUNTY AND AMERICAN GUARD SERVICES, INC.; WAIVING COMPETITIVE BIDDING IN CONNECTION WITH THE APPROVAL AND EXECUTION OF THE AFOREMENTIONED SECURITY SERVICE CONTRACT WITH AMERICAN GUARD, INC., AND IN CONNECTION WITH THE STEVEDORING AND SECURITY ACCESS AND UNITARY INVOICE AGREEMENT WITH NCL; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL RIGHTS CONFERRED THEREIN

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

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

Section 1. Approves the Stevedoring and Security Service Access and Unitary Invoice Agreement between Miami-Dade County and NCL (Bahamas), Ltd., authorizes the County Mayor or his designee to execute same on behalf of Miami-Dade County, in substantially the form attached hereto as Exhibit A and made part hereof, and authorizes the Mayor or his designee to exercise any cancellation and renewal provisions contained therein.

Section 2. Approves the non-exclusive Security Service Contract between Miami-Dade County and American Guard Services, Inc. ("American Guard Contract"), authorizes the County Mayor or his designee to execute same on behalf of Miami-Dade County, in substantially the

form attached hereto as Exhibit B and made part hereof, and authorizes the County Mayor or his designee to exercise any cancellation and renewal provisions contained therein.

Section 3. Waives formal competitive bid procedures in connection with the services covered by the American Guard Contract and also in connection with the Stevedoring and Security Access and Unitary Invoice Agreement allowing NCL 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 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 December, 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.

Steven B. Bass

EXHIBIT "A"

STEVEDORING AND SECURITY SERVICE ACCESS AND UNITARY INVOICE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND NCL (BAHAMAS), LTD.

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between NCL (Bahamas), Ltd., d/b/a Norwegian Cruise Line (hereafter, "NCL"), and Miami-Dade County, Florida, a political subdivision of the State of Florida ("County"). NCL 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 January 20, 2009, NCL and the County entered into a Cruise Terminal Agreement ("NCL CTA") setting forth terms and conditions under which NCL would Home Port certain NCL Vessels at the Port; and

WHEREAS, the NCL CTA made reference to the offering of certain types of services by the County (or a County contracted vendor or contractor) to NCL for which NCL would pay the County all resulting costs (plus an administrative fee), all of which the County would bill to NCL, and NCL would pay, as part of a bundled Port invoice (for Port Tariff and other charges) (unless otherwise defined or provided herein, capitalized terms herein shall have the definitions provided in the NCL CTA); and

WHEREAS, the Parties agree that the County shall invoice NCL for Port Tariff items (e.g., water, Dockage, Wharfage, and Harbor Fees) as well as for terminal security services, stevedoring services and administrative fees using a per vessel call Port "unitary invoice" (as defined in Section 7(a) herein); and

WHEREAS, NCL currently employs American Guard Services, Inc. (d/b/a American Guard, "AGS") directly for the operation of terminal security services to, among other things, screen their passengers, crew, vendors, contractors or other cruise line employees or guests and all provisions as they are processed through the Port of Miami terminals; and

WHEREAS, NCL has agreed that the Port will make available certain security services to it through the Port's use of contractors; and

WHEREAS, in an effort to accomplish the above in an efficient, uninterrupted and seamless manner, the County is recommending to the Board of County Commissioners (the "Board") that the County enter into a security services contract with AGS, a company NCL currently employs for security services, for the provision of such services (the "AGS Contract"); such contract to be submitted for consideration by the Board on the same agenda as this Agreement; and

WHEREAS, the parties hereto agree that the AGS Contract shall only be in effect as a bridge contract while the County initiates and completes a competitive selection process for the provision of such services, at which time the County intends to enter into contract(s) ("Future Security Contracts") with contractor(s) ("Future Security Companies") competitively selected by County to provide terminal security services as directed by the Port and its cruise line customers ("Cruise Lines") for cruise Vessels calling at the Port; and

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

WHEREAS, the Port will provide NCL with access to certain Port-permitted stevedoring service providers through or utilizing certain proposed non-exclusive County contracts with Port-permitted stevedores; and

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

WHEREAS, upon NCL selecting its stevedore, NCL 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 NCL, and subsequently confirmed in writing by the NSS, all in accordance with procedures and terms set forth herein; and

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

WHEREAS, NCL acknowledges, agrees and accepts that the County shall have no liability hereunder, or otherwise, to NCL 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 NSS or any Security Provider(s) (as defined below in this Agreement) and NCL 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 previously approved by the Board on September 15, 2009 via Resolution No. 1128-09 ("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; and

WHEREAS, the County will continue to charge NCL for, among other things, Dockage, Wharfage, Harbor Fees and Water pursuant to and in accordance with the terms and conditions of the Port of Miami Tariff No. 10 (as may be amended from time to time) and the NCL CTA.

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 January 1, 2010. Subject to the terms and conditions contained herein, the Initial Term of this Agreement shall be for a period of three (3) years from the Effective Date. NCL shall have the sole option to request an extension of this agreement from the County for up to two additional terms of one (1) year each subject to NCL providing written notice to the County at least six (6) months (180 days) prior to the termination of the then-existing term and provided further that NCL has not defaulted on any of its obligations to the County hereunder.

2. ACCESS TO STEVEDORING SERVICE PROVIDERS

The County agrees to provide NCL 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 NCL Selected Stevedore for the benefit of NCL (hereafter, "Services") and the pricing terms therefore ("Pricing") to be negotiated between and approved in writing by NCL and the NCL Selected Stevedore and delivered to the County as set forth below, and the terms, conditions, and limitations set forth herein. Once NCL and the NSS agree on the Stevedore Services and Pricing, NCL shall immediately provide the County with a signed document setting forth: (i) the identity of NCL's independently selected stevedore, (ii) the full scope of stevedoring Services to be provided to NCL by the NSS (as negotiated between NCL and the NSS), 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 NCL and the NSS), which document shall be executed by a duly authorized representative of NCL and be in a form acceptable to the County (hereafter, the "NCL 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 NCL Selected Stevedore for the benefit of NCL, at the prices agreed upon by NCL in the NCL Notice of Selected Stevedore (plus any administrative or other fees or costs due the County hereunder), and under NCL'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 NCL.

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(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 NCL.

Upon the receipt of NCL's submission to the Port of a NCL Notice of Selected Stevedore, and upon receipt by the County of clear, unequivocal, and unconditioned written confirmation from the NSS (in a form acceptable to the County) of all information and representations included in the NCL Notice of Selected Stevedore, the County agrees to direct the NCL Selected Stevedore to provide the Services described in said NCL Notice of Selected Stevedore to NCL, so long as such NSS is contracted to the County to provide such Services. The NCL Notice of Stevedore Selection shall also contain a statement that NCL's stevedore selection (from a list of licensed and Port-permitted stevedores electing to enter into certain boiler plate non-exclusive stevedoring contracts with the County in a form previously approved by the Board) was based on, among other factors, NCL'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 NCL without any input or recommendation by the County. NCL may, at any time during the term of this Agreement, change the NSS 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 NCL and its new NSS.

3. NCL ACKNOWLEDGMENTS

Notwithstanding and prevailing over any contrary term, provision or implication contained herein, NCL 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 NCL, to any vessel owned, chartered, or operated by or on behalf of NCL or any subsidiary or affiliate of NCL, 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 NCL Selected Stevedore, any of its employees, agents or subcontractors, or any other stevedore service provider for the benefit of NCL or any third party; and

(c) The NSS was chosen solely by NCL 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 NSS, or any other stevedore, to fulfill the stevedoring requirements of NCL as set forth in the NCL Notice of Selected Stevedore or any written confirmation of the Services or Pricing received from the NSS, 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 NCL, or to any third party, hereunder or otherwise, which arises from, relates to, or is in connection with any act or omission of the NCL 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. NCL NOTICE OF SELECTED STEVEDORE

The NCL Notice of Selected Stevedore, as defined in Section 2 hereof, will not become effective until (i) signed by a duly authorized representative of NCL, (ii) delivered to the Port's designated Contract Representative by NCL, 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 NSS in a form acceptable to the County, (iv) is approved in writing by the Port Director or his/her designee. Once effective, the NCL 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, NCL providing the County with an amended or superseding NCL Notice of Selected Stevedore). Following the County's receipt of the NSS's written confirmation of the terms set forth in the NCL Notice of Selected Stevedore, the County shall furnish NCL with a copy of such confirmation. The County shall have no liability or responsibility hereunder or otherwise in the event NCL and its NSS fail to mutually agree on the terms of Services or the Pricing therefore, if NCL is unable to or otherwise fails to provide the County with a NCL Notice of Selected Stevedore in a form acceptable to the County, or if the NSS is unable to or otherwise fails to deliver to the County clear and

unconditional written confirmation of all information and representations contained in the NCL Notice of Selected Stevedore in a form acceptable to the County, or for any failure of the NSS to perform any services as required or set forth in any NCL Notice(s) of Selected Stevedore or the NSS's failure to perform any of such Services up to any applicable standard of care.

5. TERMINAL SECURITY SERVICES TO BE PROVIDED

(a) The County shall offer NCL contract security services provided by the County's contractor AGS, or any Future Security Company that may be competitively selected by the County (AGS and the Future Security Companies are hereinafter the "Security Provider"), through uniformed security personnel (the "Security Personnel"), and security equipment (the "Security Equipment") (together Security Personnel and Security Equipment shall hereinafter be referred to as the "Security Services") at the cruise terminals at the Port of Miami where and when NCL vessels call (the "Premises") as set forth in the AGS Contract or Future Security Contracts (as the case may be) and as requested by NCL in writing to the County's Project Manager (as defined in the AGS Contract or the Future Security Contracts) provided such written requests are consistent with, permitted by, and do not expand the scope of such contracts.

(b) Security Personnel shall be responsible for compliance with the relevant requirements of the Facility Security Plans in compliance with the requirements of the Maritime Transportation Security Act of 2002, as amended, and its related regulations (collectively, the "MTSA"), Section 311, Florida Statutes, as amended, and any related regulations (collectively, the "FTSA"), and the International Maritime Organization's International Ship and Port Facility Security Code (the "ISPS Code") during the hours and on the dates directed by the County's Project Manager or his designee, but generally each call will arrive at approximately 0600 hours and depart at approximately 1700 hours the same day. Nonetheless, at NCL's written request, the County's Project Manager or his designee may direct that Security Services be provided at other hours. NCL agrees that the Security Services furnished under this Agreement shall be in conformity with practices which are generally current in the security industry. The Parties agree that the County does not represent and cannot warrant that the Security Services furnished will prevent loss. The County's responsibility is limited to solely providing physical security services and the County has not been engaged as a consultant or otherwise to provide an assessment of security needs at the locations at which services are provided under this Agreement other than as provided for in the Facility Security Plan (FSP) approved by the United States Coast Guard. The County shall contractually require the Security Provider to provide services, including compliance measures, which shall include the following:

(i) meeting with the appropriate Port security officers and/or appropriate employees of NCL prior to arrival of any cruise vessel that may call at the Premises (the "Vessel") and meeting with the relevant Vessel security officers upon arrival of the Vessel to use best efforts to ensure that the Premises are secure;

(ii) access control at the Premises for passengers, crewmembers, vendors, contractors, or other cruise line employees or guests;

(iii) screening of passengers, crewmembers, vendors, contractors or other cruise line employees or guests accessing the Vessel via the gangway for

prohibited items including, but not limited to, those items set forth in a list to be provided separately by the Port or its designee, using the Security Equipment;

(iv) screening of all passenger baggage for prohibited items including, but not limited to, those items to be identified in writing by the Port and/or NCL, using the Security Equipment; and

(v) such other reasonable additional security measures as may be requested, and mutually agreed upon in writing from time to time by an authorized County representative, an authorized NCL security and surveillance representative, a Vessel's security officer, or their respective authorized designees (if applicable).

Security Personnel shall have the proper licenses required to perform the Security Services.

(c) NCL acknowledges that the Security Provider shall be solely responsible for delivery, installation, modifications, calibration, repairs and maintenance of the Security Equipment provided, however, the County shall be responsible for arranging for provision of electrical service at all cruise terminals at which Security Services will be provided. The Security Provider will be contractually required to keep its Security Equipment fully operational at all times during embarkation of a Vessel. In the event of a breakdown or malfunction of any of the Security Equipment, the County shall ensure that the Security Provider is contractually required to (i) promptly use alternative screening methods complying with applicable law and regulations, and (ii) to arrange for repair or replacement of such equipment before the next embarkation period. If any Security Equipment is replaced during the Term, the Security Provider will be contractually required to use replacement Security Equipment of equivalent or better capability than the Security Equipment it replaced.

(d) The County shall contractually require the Security Provider to coordinate with County and NCL authorities to ensure security checkpoints and screening areas are functional and utilized in an efficient manner.

1. Equipment provided shall be in accordance with Section 5.d.3 below.

2. Personnel provided shall be in accordance with Section 5.d.3 below.

3. Security Services include, but are limited to, the following:

    a. Terminal access control for crew, vendors, contractors, and guests (including provision of a listing of all who visited the Terminal or Vessel during the Vessel's call, excluding all crew and passengers);
    b. The security screening of all persons and their belongings who board the vessel via the passenger gangway;
    c. The security screening of passenger checked baggage; and
    d. Providing screening of Vessel provisions using K-9 services trained/certified in accord with applicable laws and regulations.

4. For each Vessel call for which the County through the Security Provider provides security services pursuant to this Agreement, the County shall

require the Security Provider to assign one Facility Security Officer on each day an NCL Vessel calls at the Port and a Terminal Security Officer (TSO) for each of the Terminals at which a Vessel calls and shall require the Security Provider to be responsible for submitting a FSP to, and seeking its approval by, the United States Coast Guard. Also, NCL acknowledges that the Security Provider is responsible for the implementation of said Plan.

5. The County shall contractually require the Security Provider to be responsible for the preparation and submission of the Declaration of Security required by the United States Coast Guard for each Vessel call at the Port for which the County through the Security Provider provides services pursuant to this Agreement.

(e) Notwithstanding and prevailing over any contrary term, provision, or implication contained in this Agreement, nothing in this Agreement requires the County to provide, or to require others to provide, any Security Services to, for, or in connection with any County, Port, NCL or third party facility, building, vessel, automobile, bus, minibus, motor coach, cab, limousine, truck, or any other vehicle, or structure other than a Port cruise terminal occupied by a NCL cruise vessel, nor shall the County or its Security Providers, employees, or contractors have any duty hereunder or otherwise to provide security or terminal Security Services on or within any vessel owned, operated, chartered or controlled by NCL or any third party.

6. SECURITY PERSONNEL, EQUIPMENT AND PRICING

(a). Equipment. With respect to equipment provided under this Agreement, the Security Provider shall be contractually required to use equipment of the type and quantity specified herein or an equal substitute:

Passenger carried baggage X-Ray
Passenger WTMD
Checked Baggage X-Ray

Equipment Quantities shall be determined by the FSP and operational needs.

(b). Personnel. Personnel provided under this Agreement shall be of the type and quantity and for the purposes specified herein:

Facility Security Officer (FSO)	One or as required by the FSP and operational needs
Terminal Supervisor	One or as required by the FSP and operational needs
Certified Checkpoint Screener	Quantity to be determined by the FSP and operational needs
Maritime Security Officer (MSO)	Quantity to be determined by the FSP and operational needs

(c) Pricing. The current straight-time and overtime hourly rates for Security Provider guards are reflected on the rate sheet attached hereto as Exhibit A hereto, which rates NCL hereby acknowledges, accepts and approves. Notwithstanding the foregoing, should any Security Provider rates charged to the County for Security Services contemplated herein be increased, NCL shall be provided written notice of such increases and shall be subject to such increases.

7. **NCL PAYMENT OBLIGATIONS.**

(a) Unitary Invoice. For purposes of this Agreement, "Unitary Invoice" shall mean a per vessel call Port invoice, and any supplements thereto, containing Port Tariff and non-Tariff fees, charges, and costs imposed on or chargeable to NCL, including, without limitation, charges for Wharfage, Dockage, water, Harbor Fees, stevedoring Services, Security Services, Administrative Fees (as defined in subsection 7(e) below) and any other applicable Tariff or non-Tariff fees, charges, or costs imposed on or chargeable to NCL per the Port Tariff or this Agreement.

(b). Port Tariff Charges. NCL shall pay the County for all water, Dockage, Wharfage, Harbor Fees and other fees, charges, and costs due or to become due hereunder or under the terms of the Port Tariff and shall timely remit all such fees, charges, and costs to the County via wire transfer in accordance with the payment terms set forth in section 7(f) below.. If and where applicable, discounts from individual Tariff items will be as set forth in the NCL CTA, subject to the terms, conditions, and limitations set forth therein.

(c) Stevedoring Services. Upon the County's receipt of invoices from the NSS providing Services to NCL, the County shall bill NCL (as part of the Unitary Invoice) for the full amount invoiced by such stevedore to the County.

(d) Security Services. Upon receipt of invoices from the Security Provider, the County shall bill NCL (as part of the Unitary Invoice) for the full amount invoiced by the Security Provider to the County.

(e) Administrative Fee. In addition to the fees and charges due the County from NCL set forth above, NCL shall pay the County an administrative fee of seven-hundred and fifty dollars ($750.00) per vessel per call (the "Administrative Fee"), provided that under no circumstances shall the sum of Administrative Fees due and paid the County in any single County fiscal year be less than $150,000 or greater than $200,000, with the exception of the first year of this Agreement during which the Administrative Fees shall be prorated. The Administrative Fees due from NCL shall be included in the Unitary Invoice(s) and shall be paid by NCL to the County in accordance with the payment terms set forth in section 7(f) below. At the end of each County fiscal year (other than the first fiscal year of this Agreement), the County will reconcile the amount of Administrative Fees received from NCL during the preceding fiscal year. Other than the first fiscal year of this Agreement, during which said Administrative Fees will be prorated, in the event the aggregate amount of Administrative Fees paid the County in the preceding fiscal year is less than $150,000, the County shall provide NCL an invoice detailing the shortfall and NCL shall pay the full amount of said shortfall to the County, via wire transfer, within fourteen calendar days of

receipt of such invoice. In the event the aggregate amount of Administrative Fees paid the County in the preceding fiscal year is greater than $200,000, the County shall refund the overage (if any) to NCL, via check or credit, within fourteen calendar days of completing said reconciliation.

(f). NCL Payments to County. On a monthly basis, or at such greater frequency as the Port Director may determine, the Port shall provide NCL with a Unitary Invoice(s) setting forth the various fees, charges, costs, and/or reimbursements due the Port from NCL hereunder or per the Port Tariff. NCL shall pay the County all amounts billed in the Unitary Invoices (via wire transfer per Port's Assistant Director of Finance's written instructions) no later than fourteen (14) calendar days from receipt of said invoice(s). Should the Port deem it necessary to later supplement, re-issue, or re-state any previously issued Unitary Invoice, NCL shall pay the County all previously unpaid portions thereof, via wire transfer (per Port's Assistant Director of Finance's written instructions), no later than fourteen (14) calendar days from receipt of said supplement, re-issued or re-stated invoice.

8. This Section Intentionally Deleted.

9. COMMITMENT ON INDEMNITY AND INSURANCE

(a) Indemnity, Hold Harmless, and Duty to Defend Obligations of NCL. NCL agrees to indemnify and hold the County harmless for any fine, charge, assessment or penalty of any kind or in any form whatsoever that is based on any action, inaction, or omission by NCL or any of its affiliates, subsidiaries, employees, contractors, subcontractors or passengers. Further, NCL 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 any acts or omissions of NCL or any of its agents, employees, officers or contractors, including without limitation Claims based on negligence, fraud, deceptive and unfair trade practices, deceptive advertising, non-disclosure, 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 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, or any security contract 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, NCL 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) No Indemnification by County. The County does not agree to indemnify NCL for any Claims to which NCL, its agents or employees may be subjected which (1) are caused by or arise out of the acts or omissions of any NSS or other Stevedore or either's agents, employees, officers or contractors, (2) are caused by or arise out of any act or omission of AGS or any other Security Provider, or (3) which arise from, grow out of, or are connected in any way with either this Agreement, any County Stevedoring Contract, or any County security contract with any Service Provider.

(c) Insurance Coverage Required. NCL shall procure and maintain throughout the Term, at its sole cost and expense, insurance coverage as required below. NCL 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 NCL (other than crew members of the NCL 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) General Liability and Marine Liability Insurance. With respect to the use and activities of NCL and its employees, contractors, subcontractors (of any tier), agents, customers, invitees and guests in and around the Terminals and Premises, General Liability and Marine 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 NCL and its employees, contractors, agents, customers, invitees and guests in and around the Terminals, the Premises, and/or any NCL vessel in the vicinity thereof. This coverage must also include, but is not limited to, embarkation and disembarkation of all NCL Vessels. Miami-Dade County must be shown as an additional named insured with respect to all insurance coverage required in this Section 9.

(iv) Pollution Liability Coverage. NCL shall maintain at its sole cost and expense for NCL 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 NCL 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 NCL'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 written notice to the certificate holder, with a copy to the Miami-Dade Risk Management Department, Attention: Barbara Dunlop.

(e) Injury or Damage, Notification to County. In the event of any injury or damage to persons or property in or around the Terminals, NCL 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 NCL's insurance carrier or carriers.

10. 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.

11. 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 NCL 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.

12. COMPLIANCE WITH APPLICABLE LAWS

Throughout the Term of this Agreement, NCL shall comply with all Applicable Laws relating to this Agreement, NCL's use of the Terminals and NCL's use of the Port. Nothing contained herein is intended to exempt NCL 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.

13. NUISANCE

NCL 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.

14. 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.

15. 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 NCL 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 NCL, its sole and exclusive remedies for any default or breach of this Agreement committed by the County shall be those limited NCL remedies that are expressly preserved and enumerated in Section 18(b)(i) – (iv) of this Agreement.

16. 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.

17. EVENTS OF DEFAULT

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

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

(ii) NCL 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, NCL 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 NCL shall be adjudicated bankrupt, or if NCL shall make a general assignment for the benefit of creditors, or if in any proceedings based upon the insolvency of NCL are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of NCL 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 NCL 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 NCL 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.

18. REMEDIES UPON DEFAULT

(a) <u>County Remedies Upon NCL Default</u>. Upon the occurrence of a NCL 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) <u>NCL's Sole and Exclusive Remedies Upon Default</u>. Notwithstanding and prevailing over any contrary term, provision or implication contained herein, NCL 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 NCL remedies, which shall be NCL's sole and exclusive remedies for any alleged County breach or default of this Agreement:

(i) NCL may terminate this Agreement for its convenience as provided and in accordance with the terms set forth in Section 26 hereof (Termination for Convenience);

(ii) NCL may exercise its right to change stevedores hereunder from the NSS 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 NCL stevedore selection change;

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

(iv) NCL may pursue any viable claim it has, if any, against the NCL Selected Stevedore, provided, however, that the County is not joined in such claim and further provided that should the NCL 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 NCL or any of its vessels, subsidiaries, affiliates, customers, invitees or guests, then NCL 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).

19. 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 NCL 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 NSS or any contractor, subcontractor (of any tier), agent, employee, principal, guest or invitee thereof; and/or

(b) any act or omission of AGS or any other Security Provider, or any contractor, subcontractor (of any tier), agent, employee, principal, guest or invitee of either; and/or

(c) 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 NSS, any of its employees, agents, principals, subsidiaries, affiliates, contractors or subcontractors (of any tier) or any other Port permitted stevedore; and NCL hereby waives any claims it has or may obtain against the County or any of its departments, agents or employees that arise from, relate to or are connected with subsections 18(a), (b), or (c) above.

20. 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 NCL 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 NCL by third parties.

21. 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 NCL 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.

22. 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, NCL agreeing to waive any claims it may have or obtain hereunder against the County for any amounts in excess of such cap.

23. 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.

24. CONFLICT OF PROVISIONS

If there is any conflict between the provisions of this Agreement and the NCL CTA, the provisions of this Agreement shall prevail with respect to the subject matter hereof.

25. FORCE MAJEURE; INABILITY TO PERFORM

County and NCL 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, NCL, 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, NCL, 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 NCL from, any of its payment, indemnity, hold harmless, and duty to defend obligations contained in this Agreement.

26. 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 NCL shall pay all outstanding invoices to the County for any stevedoring, security or other services provided pursuant hereto to or for the benefit of NCL or any of its affiliates, vessels, or customers through the effective date of the termination.

27. 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.

28. ASSIGNMENT

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

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

29. 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), even if such payments are not actually due until after the date of termination or expiration, as the case may be; (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.

29. LACK OF AGENCY RELATIONSHIP

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

30. 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 NCL: VP Port Operations
7665 Corporate Center Drive
Miami, FL 33126

with a copy to: General Counsel at same address

31. 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.

32, DESIGNATION OF NCL'S AUTHORIZED REPRESENTATIVE

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

ATTEST:
CLERK OF THE BOARD

_____
Assistant County Attorney

By:_____
Deputy Clerk

Signed, sealed and delivered

NCL (BAHAMAS) LTD.

ATTEST:

By:_____

By: _____
Name: Kevin Sheehan
Title: Chief Executive Officer

Approved as to Form.
NCL Legal Department
Approved as to Content
By:_____

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EXHIBIT "B"

SECURITY SERVICE CONTRACT

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between American Guard Services, Inc. (d/b/a American Guard) ("Contractor"), a corporation organized and existing under the laws of the State of California, having its principal office at 1299 E. Artesia Blvd., Suite 200, Carson, California 90746 (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 Contractor has offered to provide and undertakes to furnish security services at the agreed rates and upon the terms and conditions specified as follows;

WHEREAS, the County will procure from the Contractor security services 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 Agreement 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 31 herein, and all other attachments hereto and all amendments issued hereto.

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

c) The word "Contractor" to mean American Guard Services, Inc. (d/b/a American Guard) and its permitted successors and assigns.

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

e) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

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 County's Project Manager; 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 County's Project Manager.

g) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

h) The words "Project Manager" to mean the Director of the Miami-Dade County Seaport Department, or the duly authorized representative designated to manage the Contract.

i) The words "Scope of Services" to mean the Scope of Services set forth in this Agreement including, but not limited to, the scope of services described in Article 2 below, which details the work to be performed by the Contractor.

j) 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.

k) 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.

ARTICLE 2. SCOPE OF SERVICES

(a) Contractor shall furnish the County with contract security services as more fully described below in this Article 2 (the "Security Services"), through its uniformed security personnel, described below (the "Security Personnel") which shall at all times be sufficient in number to perform the duties hereunder, and security equipment, described below (the "Security Equipment") (together Security Services, Security Personnel and Security Equipment shall hereinafter be referred to as the "Services") at the cruise Terminals at the Port of Miami, Florida (the "Premises") as directed by the County's Project Manager or his designee.

(b) Security Personnel shall be responsible for compliance with the relevant requirements of the Facility Security Plans in compliance with the requirements of the Maritime Transportation Security Act of 2002, as amended, and its related regulations (collectively, the "MTSA"), Section 311, Florida Statutes, as amended, and any related regulations (collectively, the "FTSA"), and the International Maritime Organization's International Ship and Port Facility Security Code (the "ISPS Code") during the hours and on the dates directed by the County's Project Manager or his designee, but generally each call will arrive at approximately 0600 hours and depart at approximately 1700 hours the same day. Nonetheless, the County's Project Manager or his designee may direct that Services be provided at other hours. Contractor agrees that the services furnished under this agreement shall be in conformity with practices which are generally current in the security industry. Compliance measures shall include, but are not limited to the following:

(i) meeting with the appropriate Port security officers and/or appropriate employees of any of cruise line operating at the Port prior to arrival of any cruise vessel that may call at the Premises (the "Vessel") and meeting with the relevant Vessel security officers upon arrival of the Vessel to use best efforts to ensure that the Premises are secure;

(ii) access control at the Premises for passengers, crewmembers, vendors, contractors or other cruise line employees or guests;

(iii) screening of passengers, crew, vendors,contractors, or other cruise line employees or guests accessing the Vessel via the gangway for prohibited items including, but

not limited to, those items set forth in a list to be provided by the Port or its designee, using the Security Equipment;

(iv) screening of all passenger baggage for prohibited items including, but not limited to, those items set forth in a list to be provided by the Port or its designee, using the Security Equipment; and

(v) such other reasonable additional security measures as may be requested, and mutually agreed upon, based on particular security concerns, from time to time by the County, a cruise line's director of security and surveillance, or a Vessel's security officer.

(c) Contractor shall be solely responsible for delivery, installation, modifications, calibration, repairs and maintenance of the Security Equipment provided, however, the County shall be responsible for arranging for all necessary electrical sources. Security Equipment shall be in fully operational at all times during embarkation of a Vessel. In the event of a breakdown or malfunction of any of the Security Equipment, Contractor shall promptly use alternative screening methods complying with applicable law and regulations, Contractor shall also arrange for repair or replacement of such equipment before the next embarkation period. If any Security Equipment is replaced during the Term, the replacement Security Equipment shall be of equivalent or better capability than the Security Equipment it replaced.

(d) Contractor shall coordinate with the County authorities to ensure security checkpoints and screening areas are functional and utilized in an efficient manner.

1. Equipment provided shall be in accordance with subsection (e) of this Article.

2. Personnel provided shall be in accordance with subsection (e) of this Article.

3. Services include, but are limited to, the following:

    a. Terminal access control for crew, vendors, contractors, and guests (including provision of a listing of all persons who visited the Terminal or Vessel during the Vessel's call, excluding crew and passengers);
    b. The security screening of all persons and their belongings who board the vessel via the passenger gangway;
    c. The security screening of passenger checked baggage; and
    d. Providing screening of Vessel provisions using K-9 services trained/certified in accord with applicable laws and regulations.

4. For each Vessel call for which the Contractor provides security services pursuant to this Agreement, Contractor shall assign one Facility Security Officer for each day a Vessel calls at the Port and a Maritime Security Officer (MSO) for each of the Terminals at which a Vessel calls and will be responsible for submitting a Facility Security Plan (FSP) to, and seeking its approval by, the United States Coast Guard. Also, contractor is responsible for the implementation of said Plan.

5. Contractor is responsible for the preparation and submission of the Declaration of Security required by the United States Coast Guard for each Vessel call at the Port for which Contractor provides services pursuant to this Agreement.

(e) <u>Equipment, Personnel and Pricing</u>

1. Equipment

Equipment provided under this Agreement shall be of the type and quantity specified herein or of an equal substitute:

Passenger carried baggage X-Ray
Passenger WTMD
Checked Baggage X-Ray

Equipment Quantities shall be determined by the FSP and operational needs.

2. Personnel

Personnel provided under this Agreement shall be of the type and quantity and for the purposes specified herein:

Facility Security Officer (FSO)	One or as required by the FSP and operational needs
Terminal Supervisor	One or as required by the FSP and operational needs
Certified Checkpoint Screener	Quantity to be determined by the FSP and operational needs
Maritime Security Officer (MSO)	Quantity to be determined by the FSP and operational needs

3. Price Schedule

The Per Hour costs for services under the terms of this Agreement shall be:*Unit*	*Billing Rates*	
Facility Security Officer (FSO)	$26.91 S/T	$40.37 O/T
Terminal Supervisor	$25.29 S/T	$37.94 O/T
Certified Checkpoint Screener	$24.47 S/T	$36.71 O/T
Maritime Security Officer (MSO)	$21.33 S/T	$32.00 O/T
X-ray equipment per set-up*	$350.00	
Daily Canine Service**	$600.00	

***X-ray set-up consists of:** (1) X-ray Machine
(1) Magnetometer (Metal Detector Walk-thru)
(1) Metal Detector Hand-Held Wand
Miscellaneous Divesting Trays

****Canine Service consists of:** (1) handler and (2) explosive-trained canines for 10 hours

Overtime: The overtime rate will be charged for all man hours over 10 hours of service in any 24 hour period. In addition to anticipated overtime, the overtime billing rate will be charged when overtime pay is caused by special request of the County or by Force Majeure. Additionally, there are eight holidays, on which, if service is provided, the overtime rate applies.

The eight holidays are New Year's Eve, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day.

ARTICLE 3. 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 Agreement 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 Agreement.

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 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains 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 Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto 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 in all aspects of the Services performed hereunder.

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

d) The Contractor shall furnish all labor, 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 County's Project Manager.

e) The Contractor acknowledges that the County 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 County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County 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 January 1, 2010 and shall be for one (1) year. The County, at the sole discretion of the County Manager, reserves the right to exercise the option to renew this Contract for a period for two (2) additional one year terms. The County Manager shall provide written notice to the Contractor at least sixty (60) days prior to the expiration of the term of this Contract, or within sixty (60) days prior to the expiration of the first renewal term if excercised, if the County decides to exercise the option to renew the Contract.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement 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

American Guard Services, Inc.
1299 East Artesia Boulevard
Carson, CA 90746
Tel: 424-213-4000
Fax: 310-645-6233

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 the County's requirements and has asked such questions and 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 be as specified in Article 2, subsection (e), Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods, except for yearly percentage increase in the living wages that will be applied on

October 1st of each year to the classifications that are billed to the County at hourly rates specified in Article 2, subsection (e). The Contractor is responsible for requesting the living wage increase. The Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, 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 Article 2, subsection (e) – Price Schedule. 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, AGS 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. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, 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 Norwegian Cruise Line 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 Agreement 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 attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement 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) The County shall defend, indemnify and hold harmless Contractor, and its agents, officers, directors, employees, successors and assigns from and against losses liability damages, claims, costs, settlements, suits and attorney fees (collectively, "Losses") arising from Contractor's full compliance and enforcement of the written policies and procedures of the County in effect at the time, except to the extent that in complying or enforcing any such policies or procedures Contractor: (i) breaches its representations or warranties or other obligations under this agreement, or (ii) Contractor commits negligent or tortious acts or omissions, or (iii) Contractor commits willful misconduct, including, without limitation, any violations of local, state and/or federal law or regulations.

c) Notwithstanding anything to the contrary herein it is agreed that any indemnification as set forth herein shall not apply to any occurrence, demand, tort or liability arising from the gross, willfully negligent, or intentional acts or omissions of any indemnified party.

d) Upon County's notification, the Contractor shall furnish to the Department of Procurement Management, Certificates of Insurance which list the County and Norwegian Cruise Line. 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 AGS' 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, 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 Norwegian Cruise Line 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 Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, 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. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, 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.

ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The 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 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 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, 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. 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 and qualified security guards and other security personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County 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 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 Agreement.

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 may require the Contractor to remove an employee it deems 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.

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 Agreement, 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 Agreement 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 Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager or his designee 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, this Agreement 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 determinations or orders and shall promptly obey and follow every order of the Project Manager or his designee, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the order. Where orders are given orally by the Project Manager or his designee, they will be issued in writing by the Project Manager or his designee as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager 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 Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, 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 Agreement (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 Deliverable meets the requirements of this Agreement 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 Agreement. 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 judgement 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 Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

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

c) In those situations where this Agreement 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 Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such

records, and all other documents relevant to the Services furnished under this Agreement for a period of five (5) years from the expiration date of this Agreement 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 Agreement 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 Agreement.

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. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the Facility Security Officer, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution, unless the need for such substitution is caused by an emergency beyond the control of Contractor. The failure of the County to respond within ten (10) days to the Contractor's written request for approval of the substitution of personnel for the Facility Security Officer shall be deemed to constitute the County's approval of such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

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

ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) The Contractor shall not cause any part of this Agreement 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

Agreement 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 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 that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

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 Agreement. 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 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 21. 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 22. SEVERABILITY

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

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

a) The County may terminate this Agreement 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 County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement 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 work 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 County's materials and property;

iii. cancel orders;

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

v. take no action which will increase the amounts payable by the County under this Agreement; and

e) In the event that the County exercises its right to terminate this Agreement 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 Agreement up to the Effective Termination Date; and

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

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

ARTICLE 24. <u>EVENT OF DEFAULT</u>

a) An Event of Default shall mean a breach of this Agreement 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 delivered Deliverables 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 where required by this Agreement;

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, 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 Agreement. 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 Agreement;

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 Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. 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 Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction 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 County's rights 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 prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

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

a) lost 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 may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables 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 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 Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable 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 County's option 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 Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County 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 Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable 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 Work.

ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the

County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the

County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. 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 Agreement. 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 Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. <u>INSPECTOR GENERAL REVIEWS</u>

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 Agreement 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 Agreement. 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 33. 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 Agreement, 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 Agreement, Contractor shall not be required pursuant to this Agreement 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 34. 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 35. 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 Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement 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 Agreement, or in the services, supplies or work, to which this Agreement 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 Agreement; 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 Agreement and those provided by statute, the stricter standard

shall apply.

e) 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 36. 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 37. 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 38. 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 39. 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 40. 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 Agreement 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 41. SURVIVAL

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

ARTICLE 42. NON-EXCLUSIVITY

The parties acknowledge that this Agreement 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 Agreement.

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

American Guard Services, Inc.	Miami-Dade County
By: _____	By: _____
Name: Sherif Assal	Name: _____
Title: Corp. Secretary	Title: _____
Date: 10/16/09	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

JULIA S. MATOS
MY COMMISSION # DD 769417
EXPIRES: July 17, 2012
Bonded Thru Notary Public Underwriters

10/16/2009 - Julia S. Matos - Personally known to me.