

MEMORANDUM

Agenda Item No. 8(J)(2)

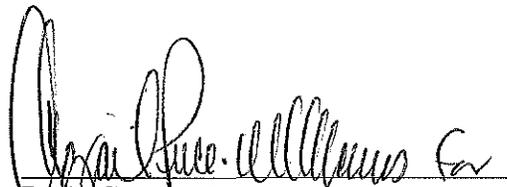
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 17, 2013

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

SUBJECT: Resolution authorizing
Amendment No. 2 to the
Cruise Terminal Agreement
between Miami-Dade County
and NCL (Bahamas) Ltd.

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


R. A. Cuevas, Jr.
County Attorney

RAC/cp

Date: December 17, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing Execution of Amendment No. 2 to the Cruise Terminal Agreement between Miami-Dade County and NCL (Bahamas) Ltd.

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of Amendment No. 2 ("Second Amendment") to the Cruise Terminal Agreement between Miami-Dade County ("County") and NCL (Bahamas) Ltd ("Norwegian").

SCOPE

PortMiami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Second Amendment provides Norwegian incentives to Home Port the new Norwegian Breakaway Plus class vessel in Miami beginning fall 2015 for a minimum of three (3) years with year-round service. Once this ship arrives to Miami in fall 2015, Norwegian's minimum Passenger Movements shall increase from one million (1,000,000) Passenger Movements to one million two hundred thousand (1,200,000) Passenger Movements in FY 2015, and then to one million three hundred thousand (1,300,000) Passenger Movements annually in FY 2016 through the term. This passenger pledge increases Norwegian's minimum net guarantee to the Port by \$23,000,000 over the initial term.

In recognition of the increased number of passengers that will travel through Miami, the Port will provide two marketing incentive payments to Norwegian. The first payment of one million five hundred thousand dollars (\$1,500,000) will be paid to Norwegian on or before December 31, 2013, and the second payment of one million five hundred thousand dollars (\$1,500,000) to be paid on or before November 15, 2014. These incentives, totaling three million dollars (\$3,000,000), will be paid via the Port's revenue funds.

Additionally, the annual marketing incentive paid by PortMiami to Norwegian (as defined in the First Amendment) shall be capped at 1.65 million potential passengers which Norwegian brings to the Port per year for a three-year period commencing on October 1, 2014. The marketing incentive cap is intended to show willingness by Norwegian and PortMiami to continually work together towards a mutually beneficial agreement that balances passenger throughput commitments, facilities, and incentives.

The Amendment increases Norwegian's remaining minimum net guarantee to the Port from \$141 million to \$164 million (after incentives) to the County over the current amended Term (not including the renewal option). The average annual guarantee has also increased by approximately twenty-five percent (25%).

Norwegian is current on all their obligations to the Port and their account is in good standing with the County.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Agreement are Juan Kuryla, Port Director Designee, Kevin Lynskey, Assistant Port Director, Business Initiatives, and Hydi Webb, Business Development Manager.

BACKGROUND

PortMiami and Norwegian have shared a long and prosperous business relationship over the last 45 years. Miami and Norwegian have a very unique relationship in the sense that Norwegian is one of the few cruise lines that have committed PortMiami as its exclusive homeport in the South Florida region (Palm Beach, Broward, Monroe, and Miami-Dade Counties). Norwegian is a leader in the cruise industry, operating a fleet of 12 vessels with another 3 vessels on schedule for delivery by spring 2017.

On December 16, 2008, the Board approved Resolution R-1442-08, which authorized the execution of a Cruise Terminal Agreement with Norwegian. This Agreement had a ten (10) year term with a five (5) year renewal period at Norwegian's option, exercisable in 2018. The Agreement has been profitable for both parties as it provided the Port with significant guaranteed passenger volumes and revenues in return for financial incentives based on guaranteed volume increases.

On April 3, 2012, the Board approved Resolution R-295-12 (Amendment No 1), which authorized an extension of the base agreement by three (3) years to 2021 and retained a five (5) year option to renew at the sole discretion of Norwegian and provided marketing incentive payments totaling three million dollars (\$3,000,000) by the PortMiami to Norwegian in exchange for the *Norwegian Getaway* for a minimum of three (3) years, as well as an increase in passenger guarantees of 3 million passengers through the term, the establishment of an annual marketing incentive based on passenger throughput paid by PortMiami to Norwegian, and the ability for Norwegian to carry over excess passenger movements above their minimum guarantees to offset any undercounts.

Norwegian has an exciting new-build program with two Breakaway Plus class vessels recently announced, each capable of carrying in excess of 4,200 cruise passengers. The first ship will be delivered in fall 2015 and the second in spring 2017. Responding to the opportunity to Home Port the first new Breakaway Plus class ship in Miami, this proposed Amendment No. 2 to the Agreement is recommended for approval. Norwegian intends to announce this Miami deployment should the Board approve this Amendment. Under the proposed terms, Norwegian commits the following to the County:

- Passenger Guarantees will remain at a minimum of one million (1,000,000) Passenger Movements during Fiscal Year 2014, and increase to one million two hundred thousand (1,200,000) minimum Passenger Movements in FY 2015, and to one million three hundred thousand (1,300,000) minimum Passenger Movements in FY 2016 through the end of the term.
- Norwegian will homeport its first Breakaway Plus class vessel, in Miami beginning fall 2015 for a minimum of three (3) years with year-round service.
- Norwegian agrees to host the ship's official naming ceremony at PortMiami in the fall of 2015.
- The calculation of Norwegian's Annual Marketing incentive (as defined in the First Amendment) shall be capped at 1.65 million potential passengers or \$3.23 million per year from FY 2015 through FY 2017.

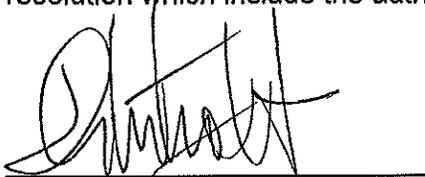
In order for the Port to receive this new ship and pledge, Norwegian will receive the following incentive:

- The County agrees to pay Norwegian two marketing support payments in connection with Norwegian's commitment to deploy this new vessel in Miami, totaling three million dollars (\$3,000,000). The first payment of one million five hundred thousand dollars (\$1,500,000) will be paid to Norwegian on or before December 31, 2013 and the second payment of one million five hundred thousand dollars (\$1,500,000) to be paid on or before November 15, 2014. These incentives, totaling \$3 million, will be paid via the Port's revenue funds.

The effective date of this Amendment shall be after approval of this Amendment No. 2 by the Miami-Dade County Board of County Commissioners and the expiration of any applicable Mayoral Veto period. Nevertheless, the above-referenced incentives shall be applicable on the County's fiscal year at the time of execution.

DELEGATED AUTHORITY

In accordance with Section 28.3 of the Miami-Dade County Code related to identifying delegation of the Board authority, there are no authorities beyond that specified in the resolution which include the authority for the Mayor or his designee to execute the Agreement.



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 17, 2013

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

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

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 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(J)(2)
12-17-13

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AMENDMENT NO. 2 TO THE CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND NCL (BAHAMAS) LTD. INCREASING NCL'S ANNUAL PASSENGER COMMITMENT TO COUNTY AND PROVIDING COUNTY MARKETING INCENTIVE PAYMENTS TO NCL OF THREE MILLION DOLLARS; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS 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 execution of Amendment No. 2 to the Cruise Terminal Agreement between Miami-Dade County and NCL (Bahamas) Ltd., in substantially the form attached hereto and made a part hereof; and

Section 2. Authorizes the Mayor or the Mayor's Designee to execute this Amendment No. 2 after review and approval by the County Attorney's Office and to exercise any cancellation and renewal provisions therein.

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of December, 2013. 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.

SAB

Steven B. Bass

AMENDMENT NO. 2 TO THE CRUISE TERMINAL AGREEMENT

BETWEEN MIAMI-DADE COUNTY AND NCL (BAHAMAS) LTD,

THIS AMENDMENT No. 2 (hereafter, the "Second Amendment") is made and entered into this _____ day of _____, 2013, by and between Miami-Dade County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County," which owns and operates the Dante B. Fascell Port of Miami-Dade, hereinafter referred to as the "Port," and NCL (Bahamas) Ltd., d/b/a Norwegian Cruise Line, a Bermuda corporation, hereinafter referred to as "Norwegian."

WHEREAS, Norwegian is a large cruise customer of the Port and has handled an average of 940,000 passengers annually over the last three (3) years; and

WHEREAS, the County and Norwegian entered into a Cruise Terminal Agreement (the "Agreement"), which was approved by the Miami-Dade County Board of County Commissioners by Resolution No. R-1442-08 on December 16, 2008; and

WHEREAS, the County and Norwegian entered into an amendment of the Agreement on April 20, 2012 ("First Amendment"), pursuant to County Commission Resolution No. R-295-12, which, among other things, extended the Initial Term of the Agreement by three years, to September 30, 2021, and increased certain Norwegian minimum passenger movement guarantees; and

WHEREAS, under the First Amendment, Norwegian also committed to home port its Norwegian Getaway at the Port of Miami for a minimum of three years of year-round service commencing in the spring of 2014; and

WHEREAS, Norwegian currently operates a fleet of 12 cruise vessels, with another three new vessels scheduled for delivery by the Spring of 2017, including delivery of a Breakaway Plus class vessels capable of carrying over 4,200 cruise passengers; and

WHEREAS, in consideration of certain additional incentives offered by the County, Norwegian now commits to home port its first Breakaway Plus class vessel at the Port of Miami for a minimum of three years of year-round service, commencing in the fall of 2015, and to also augment certain of its minimum annual and other passenger guarantees to the County; and

WHEREAS, the County and Norwegian now desire to enter into this Second Amendment to the Agreement in order to revise the Agreement as set forth below;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The effective date of this Second Amendment shall be the date on which this Second Amendment is executed after the Second Amendment is approved by the Miami-Dade County Board of County Commissioners and any applicable Mayoral Veto has expired. Notwithstanding the foregoing effective date of this Second Amendment, the parties agree that all incentives contained herein shall be based on the County's fiscal year at the time of execution of this Second Amendment.

2. The following definitions shall be added at the end of Section 2 of the Agreement:

- (oo) **“Amendment No. 1” or “First Amendment”** shall mean the April 20, 2012 Amendment No. 1 to the December 16, 2008 Cruise Terminal Agreement between Miami-Dade County and Norwegian.
- (pp) **“Breakaway Plus Class Vessel”** shall mean a new class of Norwegian cruise vessel with a cruise-passenger capacity of at least 4,200 passengers.
- (qq) **“Norwegian Breakaway Plus Commitment”** shall have the meaning set forth in Section 4 of this Second Amendment.
- (rr) **“Revised Exhibit A”** shall have the meaning set forth in Section 3 of this Second Amendment.

3. Both Exhibit A to the Agreement and Paragraph 5 of the First Amendment are hereby deleted in their entirety and replaced with the following “Revised Exhibit A”, it being agreed that all references to Exhibit A contained in the Agreement (and all references to the earlier replacement to Exhibit A set forth in the First Amendment) shall hereafter be deemed references to and shall be governed by the below set forth “Revised Exhibit A”:

Revised Exhibit A

Commencing October 1, 2011 and in each Fiscal Year of the Initial Term, Norwegian shall generate, and hereby guarantees, Port Passenger Movements of no less than the following amount set forth below that corresponds to the applicable Fiscal Year:

- (i) FY 2012 (October 1, 2011 — September 30, 2012): 650,000 minimum Passenger Movements
- (ii) FY 2013 (October 1, 2012 — September 30, 2013): 650,000 minimum Passenger Movements
- (iii) FY 2014 (October 1, 2013 — September 30, 2014): One-Million (1,000,000) minimum Passenger Movements
- (iv) FY 2015 (October 1, 2014 — September 30, 2015): One-Million and Two Hundred Thousand (1,200,000) minimum Passenger Movements
- (v) FY 2016 and for each Fiscal Year thereafter, through and including the Fiscal Year ending September 30, 2021, the Minimum Annual Guarantee shall be One-Million and Three Hundred Thousand (1,300,000) Passenger Movements.

Each Fiscal Year during the Term, as well as during any properly noticed, negotiated, and executed Renewal Term (if any), Norwegian shall make a Shortfall Payment to the County, if applicable, within ten (10) calendar days of receipt of a County invoice setting forth the

amount of the Shortfall Payment due for the preceding Fiscal Year. The amount of the Shortfall Payment due the County from Norwegian in any Fiscal Year, if any, shall be calculated as the number of Passenger Movements guaranteed in the applicable Fiscal Year (per Revised Exhibit A) less the number of actual Passenger Movements achieved in that Fiscal Year times the applicable passenger Wharfage rate(s) then-in effect.

4. The following shall be added to the Agreement as new Section 3(1):

(I) Norwegian Breakaway Plus Commitment:

- (i) In addition to previously committing to homeport the Norwegian Getaway at PortMiami year-round for a minimum of three (3) years commencing in February of 2014, Norwegian shall also homeport its first Breakaway Plus Class Vessel at the Port of Miami, on a year-round basis, for no less than three (3) consecutive years (36 months), beginning in the Fall of 2015.
- (ii) Norwegian agrees to host the Breakaway Plus vessel's official naming ceremony at the Port of Miami in the Fall of 2015.
- (iii) In recognition of the increased number of cruise passengers that will transit the Port as a result, in part, of Norwegian's commitment to deploy and homeport the Norwegian Breakaway Plus vessel at the Port of Miami for a minimum of three years of year-round service, the County will provide payment to Norwegian for marketing costs to be incurred in advance of the delivery of the Breakaway Plus vessel in the amount of three million dollars (US\$3,000,000), to be paid in two separate payments of \$1,500,000 each: the first to be paid on or before December 31, 2013; and the second to be paid on or before November 15, 2014. These payments shall be in addition to any other payments or financial incentives payable by the County to Norwegian under the Agreement and shall not be subject to any escalation clause contained in the Agreement or any amendment thereto

5. The following shall be added to the end of Section 3(e)(viii) of the Agreement (as amended through the First Amendment) and also to the end of Exhibit A1 to the First Amendment (as new note 3):

The Annual Marketing Incentive (as defined in the First Amendment) shall be subject to a maximum cap of \$3.23 Million per year for a three-year period commencing on October 1, 2014 and extending through September 30, 2017.

6. The County and Norwegian mutually express their intent to work together to negotiate a replacement agreement to the Agreement as amended, which could result in additional Norwegian Passenger Movement commitments and/or an agreement on a new cruise terminal facility.

