

MEMORANDUM

Agenda Item No. 8(J)(1)

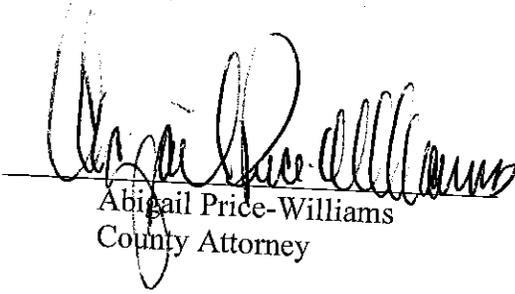
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: December 1, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving and authorizing the County Mayor to execute Amendment No. 1 to the Preferential Berthing Agreement between Miami-Dade County and MSC Cruises S.A. (f/k/a MSC Crociere S.A.), which extends the term of the Preferential Berthing Agreement, requires MSC Cruises to Homeport its newest vessel, the MSC Seaside, at the Port of Miami, provides for a Marketing Incentive to MSC Cruises based on passenger moves over 425,000 per year with higher incentives for increased passenger moves, increases passenger throughput guarantees by MSC Cruises, provides for possible use of a unitary fee in the future, and obligates the County to spend a maximum of \$25,000,000.00 for improvements to terminal F at the Port of Miami

The accompanying resolution was prepared by the Port of Miami placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz and Co-Sponsor Commissioner Rebeca Sosa.

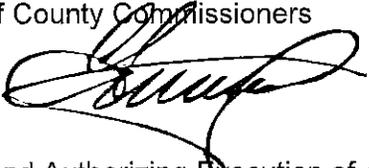


Abigail Price-Williams
County Attorney

APW/cp

Date: December 1, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Approving and Authorizing Execution of Amendment No. 1 to the
Preferential Berthing Agreement between Miami-Dade County and MSC Cruises S.A.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution approving and authorizing the execution of Amendment No. 1 ("Amendment") to the Preferential Berthing Agreement (Agreement) between Miami-Dade County (County) and MSC Cruises S.A. (MSC) providing for extension of the original Term and other amendments to the original agreement.

SCOPE

Port Miami (Port) is located within District 5, which is represented by Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide, as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Amendment provides MSC annual incentives to homeport the new MSC Seaside year-round at the Port beginning in late 2017. This Amendment also extends the Term of the current Preferential Berthing Agreement, which would otherwise expire on October 1, 2016, for an additional 11 years to October 1, 2027 with a five-year option to renew, subject to future negotiations and Board approval (Term).

Minimum annual guarantees to the Port shall remain the same as in the current Agreement (80,000 Passenger Moves per fiscal year) through FY 2017. Despite this guarantee, expected total combined revenues to the Port for FY 2016 and 2017 are anticipated to be approximately \$9.6 million. However, commencing with the arrival of the MSC Seaside in FY 2018 and every fiscal year through the remainder of the Term of the current Agreement, MSC shall guarantee a minimum of 425,000 annual Passenger Moves. In terms of revenue, MSC shall annually guarantee approximately \$7 million in FY 2018 escalating to \$9.8 million in FY 2027 (this represents a 3 percent increase annually to dockage and wharfage fees). Total guaranteed revenues to the Port as part of this Agreement are approximately \$90 million. However, should MSC continue to call with a seasonal ship (based on terminal availability) plus the year-round MSC Seaside vessel, then anticipated revenues to the County will be approximately \$150 million during the Term.

In exchange for this long-term commitment and increased guarantees, MSC shall have Preferential Berthing Rights at Terminal F on Saturdays year-round during the Term. Each year, MSC shall receive three (3) types of incentives as part of this Amendment:

- The first incentive is a share of parking revenue, which exists in the current Agreement and is consistent with other cruise line agreements. The incentive is based on each line's respective share of PortMiami's multi-night cruise passenger throughput. If MSC were to run a year-round vessel plus a seasonal vessel, these

vessel calls would be anticipated to produce approximately \$1.8 million in annual parking revenues to which MSC will be entitled.

- The second incentive is an annual marketing fee of \$175,000 paid to MSC during each of the first three (3) years of this Amendment (FY 2016, 2017, and 2018) to promote MSC's year-round Miami-Dade County operations at Port Miami.
- The third incentive is an Annual Marketing Payment linked to MSC annual passenger volumes over 425,000 passenger moves. This incentive is anticipated to range from approximately \$200,000 in FY 2018 to slightly over \$300,000 by the end of the Term based on a year-round and seasonal vessel.

Additionally, the County commits to making capital improvements to Terminal F to accommodate the MSC Seaside's ship size and increased passenger volumes (Exhibit B). The Port is not obligated to make improvements beyond \$25 million. However, the County, at its own election, may make additional improvements beyond those needed for the Seaside to accommodate an even larger class of vessels for which PortMiami will be competing. The Board will be presented with these construction contracts for Terminal F at a later date when the true costs are further defined. The funding for such improvements shall come from the Port's FY 2016 adopted capital budget. The remainder will be included in the Port's FY 2017 capital budget, which will come from Port bonds/loans, FDOT grants, federal grants, tenant funds and/or operating funds.

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 those specified in the resolution, which include the authority for the Mayor or his designee to execute the Amendment No. 1 and for exercising any cancellation, termination, renewal, and other rights as contained in the Agreement as amended by Amendment No. 1.

TRACK RECORD/MONITOR

The Port staff members responsible for monitoring the Agreement are Juan Kuryla, Port Director; Kevin Lynskey, Deputy Port Director; and Hydi Webb, Assistant Director of Business Development and Marketing.

BACKGROUND

MSC is an Italian cruise line owned by Mediterranean Shipping Company S.A., a privately held shipping group based in Geneva, Switzerland, which is the second largest container shipping line in the world. MSC is registered to do business in the State of Florida through its North American sales and marketing agent, MSC Cruises (USA), Inc.

MSC was founded in 1990 and is currently the fourth largest cruise operator in the world with a 6.4 percent market share. MSC's leading market is the Mediterranean where it has year-round operations. However, it is worthy to note that MSC, for the first time, will begin year-round sailings to the Caribbean from Miami beginning winter 2015 with the MSC Divina. MSC currently owns and operates a fleet of 12 vessels. It has an aggressive newbuild program with four (4) new ships on order, plus options for an additional three (3) ships. The four (4) new ships are part of MSC's revolutionary new Seaside-class vessels (capable of carrying 5,170 passengers) and Vista-class vessels (capable of carrying 5,715 passengers), which will be the largest ships in the MSC fleet.

On January 24, 2012, via Resolution No R-38-12, the Board approved a Preferential Berthing Agreement between Miami-Dade County and MSC Crociere S.A. Under the terms of this Agreement, MSC committed to move its cruise ship operations from Port Everglades to PortMiami in FY 2014. The Agreement provided MSC with Preferential Berthing Rights to Terminal F on Saturdays during the winter season, plus a percentage of parking revenues from the Port, in exchange for a guarantee of a minimum annual passenger pledge of 80,000 and exclusive homeport rights of MSC vessels in the South Florida region.

Subsequently, the Port and MSC signed a non-binding Letter of Intent in March 2015 to collaborate on an expanded terminal with year-round berthing rights on Saturdays to accommodate the MSC Seaside. This Amendment further memorializes such Letter of Intent. The MSC Seaside will be MSC's first cruise ship to be christened in the United States and will arrive in Miami for homeport operations in December 2017.

Under the terms of this proposed Amendment, MSC will continue to have a Minimum Annual Guarantee of no less than 80,000 Passenger Movements during FY 2016 and Fiscal Year 2017. Commencing with the arrival of the MSC Seaside in FY 2018, and every fiscal year thereafter during the Term, MSC shall guarantee a minimum of 425,000 annual Passenger Movements. Additionally, commencing with the arrival of the MSC Seaside, MSC will be guaranteeing minimum annual dockage revenue to the Port. The combined increase in passenger movements and establishment of a dockage guarantee is approximately \$6.2 million higher than original Agreement.

The wharfage and dockage rates chargeable by the County to MSC shall continue to increase annually at three (3) percent through the Term. MSC's wharfage rate in Fiscal Year 2016 shall be \$11.32 per passenger embarkation and \$11.32 per passenger debarkation. The dockage rate in FY 2016 shall be \$0.35 per gross registered ton. Aside from dockage and wharfage rates, all other applicable Port fees due to the County from MSC vessels shall be billed as per the Port Tariff. Should MSC fail to meet its annual guarantee in any given year, MSC will make a shortfall payment to the County within 30 days of the end of the fiscal year in which the guarantee was not met. Shortfall payments will be based on the then applicable wharfage and dockage rate for the given fiscal year multiplied by the number of passenger moves below the minimum annual guarantee, or, if a Unitary Fee is implemented, the shortfall payments will be based on the then-applicable Unitary Fee rate.

MSC shall have an option to switch from a dockage and wharfage billing structure to a Unitary Fee model (a per passenger fee charged per embarkation and debarkation as an alternative payment mechanism to passenger wharfage and dockage fees for the purpose of streamlining the billing process) during the Term. Six (6) months prior to the start of any fiscal year, MSC shall have the right to request a Unitary Fee to commence at the beginning of the following fiscal year provided that the Port and MSC mutually agree on the Unitary Fee rate, which shall be subject to annual reconciliations. The Unitary Fee shall continue to increase three (3) percent annually.

A Passenger Surplus provision shall commence in FY 2017 through the Term, which will allow MSC to carryover surplus Passenger Movements to a future year that can be applied to a shortage during that year. Such Passenger Surplus may be applied in FY 2020 and/or

later. The amount of Passenger Movements that MSC can accrue shall be capped at 150,000 passenger moves, but only 75,000 of those moves may be used to offset a shortage within a two-year consecutive period.

In exchange for this pledge, MSC will receive Preferential Berthing Rights at Terminal F year-round on Saturdays. Once the MSC Seaside arrives in December 2017, MSC intends to continue to have the MSC Divina homeport seasonally at PortMiami. This will be the first time MSC commits two (2) vessels to homeport at the Port in the same fiscal year. The attached Exhibit A sets forth the dates committed to the MSC Divina during FY 2018. After this year, if MSC seeks to have another Miami vessel in addition to the MSC Seaside, the Port will use its commercially reasonable efforts to schedule MSC vessels at Terminal F. The Port shall have rights to berth MSC calls at other cruise terminals provided that such use does not interfere with preferential rights of another cruise line agreement.

MSC has expressed interest for an option to secure an additional year-round berth on Sundays at PortMiami beginning FY 2019-20. However, at the time this Amendment is executed, the Port is not able to commit to such expanded berthing rights. Thus, the Port agrees to inform MSC in writing, within 18 months from the execution of this Amendment, if a year-round berth on Sundays becomes available for Fiscal Year 2019-20 and to provide MSC the right of first refusal for such berth. MSC may exercise such right within 90 days notice. Additionally, should this right become available, an Amendment shall be brought back to the Board outlining new guarantees.

In exchange for MSC's long-term commitment and increased passenger guarantees, the County shall provide three (3) incentives to MSC as described in the fiscal impact section of this memo:

1. **Parking Revenues:** This Amendment continues to provide MSC with the parking incentive as included in the Agreement, but adds some additional exclusions to the incentive calculation to include ferry services, cruises less than 24 hours, and non-cruise daily parking. The original formula remains the same in that the parking incentive shall be based on the proportion of MSC multi-day embarkations to the Port's total multi-day cruise embarkations. The Port shall remit parking revenues to MSC within sixty (60) days of the close of each fiscal quarter. Once the MSC Seaside arrives in FY 2018, MSC continues to have an additional seasonal vessel then the parking revenue share to which MSC shall be entitled is approximately \$1.8 million annually.
2. **Marketing Incentive for Year-round Operations:** The County shall pay MSC a marketing incentive during Fiscal Years 2016, 2017, and 2018 in the amount of \$175,000 each fiscal year. Such funds will be used by MSC to promote their year-round Miami sailings.
3. **Annual Marketing Incentive:** MSC shall qualify for an annual marketing incentive based on passenger performance over 425,000 annual passenger moves. MSC shall receive 0.5 percent calculated on passenger wharfage and dockage (or Unitary Fee, if applicable) for every additional 75,000 passenger movements above

425,000 passenger moves up to a cap of 15 percent per fiscal year, which equates to 2.6 million passengers. This incentive, payable to MSC within 60 days of the end of said fiscal year, is anticipated to range from \$200,000 in Fiscal Year 2018 to slightly over \$300,000 by the end of the Term.

The Port commits to making improvements to Cruise Terminal F to accommodate the MSC Seaside and its increased passenger capacity as per the attached Exhibit B. Such improvements include an expansion of the terminal footprint, increased queuing and check-in capacity, additional seating, enlarged baggage collection, and passenger boarding bridges designed to accommodate a larger vessel such as the MSC Seaside. The Port's obligation is capped at \$25 million and in no event shall the Port be responsible for any improvement cost exceeding this cap. As mentioned in the Fiscal Impact section above, the Port may elect to make additional substantial terminal improvements to better accommodate the industry's ever-increasing cruise vessel sizes homeporting at the Port.

This Amendment extends the Term of the current Agreement (which is set to expire on October 1, 2016) for 11 years to October 1, 2027. MSC shall have the option to extend for an additional five-year term conditioned upon MSC providing written notice to the County at least 27 months prior to the expiration of the then-existing term and subject to future negotiated terms subject to approval by the Board.

The Port is recognized a world-class port with a diversity of cruise brands appealing to a range of passenger budgets. The growth of MSC at the Port will strengthen Miami's offerings of luxury cruise brands to passengers throughout the world.

The effective date of this Amendment shall be the earlier of (1) the expiration of any Mayoral veto period, or (2) approval and execution by the County Mayor of this Amendment and the filing of such approval with the Clerk of the Board.



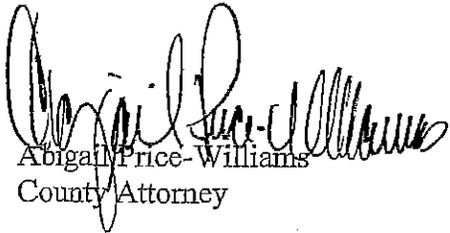
Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: December 1, 2015

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(J)(1)

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
- Statement of social equity 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)(1)
12-1-15

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE AMENDMENT NO. 1 TO THE PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MSC CRUISES S.A. (F/K/A MSC CROCIERE S.A.), WHICH EXTENDS THE TERM OF THE PREFERENTIAL BERTHING AGREEMENT, REQUIRES MSC CRUISES TO HOMEPORT ITS NEWEST VESSEL, THE MSC SEASIDE, AT THE PORT OF MIAMI, PROVIDES FOR A MARKETING INCENTIVE TO MSC CRUISES BASED ON PASSENGER MOVES OVER 425,000 PER YEAR WITH HIGHER INCENTIVES FOR INCREASED PASSENGER MOVES, INCREASES PASSENGER THROUGHPUT GUARANTEES BY MSC CRUISES, PROVIDES FOR POSSIBLE USE OF A UNITARY FEE IN THE FUTURE, AND OBLIGATES THE COUNTY TO SPEND A MAXIMUM OF \$25,000,000.00 FOR IMPROVEMENTS TO TERMINAL F AT THE PORT OF MIAMI; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY CANCELLATION, TERMINATION, RENEWAL AND OTHER RIGHTS CONTAINED IN THE ORIGINAL AGREEMENT AS AMENDED BY AMENDMENT NO. 1

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 Amendment No. 1 ("Amendment No. 1") to the Preferential Berthing Agreement ("Original Agreement") between Miami-Dade County and MSC Cruises S.A. and authorizes the County Mayor or the County Mayor's designee to execute Amendment No. 1 on behalf of Miami-Dade County, in substantially the form attached hereto as Exhibit A and made part hereof.

Section 2. Authorizes the County Mayor or the County Mayor's designee to exercise any cancellation, termination, renewal and other rights and provisions contained in the Original Agreement as amended by Amendment No. 1.

The foregoing 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:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of December, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Richard Seavey

**Amendment No. 1 to the Preferential Berthing Agreement
Between Miami-Dade County and MSC Cruises S.A.**

THIS AMENDMENT No. 1 ("Amendment No. 1") to the January 24, 2012 Preferential Berthing Agreement ("Original Agreement") by and between MSC Cruises S.A. (f/k/a MSC Crociere S. A.), a Swiss corporation (hereinafter "MSC"), and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter "County") is made and entered into this _____ day of _____, 2015, MSC and the County are hereinafter collectively referred to as "the Parties."

WHEREAS, by Resolution No. 38-12 on January 24, 2012, the Miami-Dade County Board of County Commissioners approved the Preferential Berthing Agreement between Miami-Dade County and MSC Crociere S.A. (MSC Crociere S.A. is now known as MSC Cruises S.A.) ("Original Agreement" and together with this Amendment No. 1, the "Amended Agreement"); and

WHEREAS, the Original Agreement is set to expire at 12:01 a.m. on October 1, 2016, but also allows MSC to exercise two one year renewal options; and

WHEREAS, MSC and the County intend to extend the term of the Original Agreement from its current expiration at 12:01 a.m. on October 1, 2016 for eleven (11) years to 12:01 a.m. on October 1, 2027 with a mutual option to renew for one (1) additional five (5) year extension term, with such term expiring at 12:01 a.m. on October 1, 2032 subject to certain conditions and notifications set forth below; and

WHEREAS, MSC agrees to homeport its new-build ship, the *MSC Seaside*, at the Port of Miami beginning fall of 2017, with sailings being seven (7) day sailings year round; and

WHEREAS, MSC agrees to increase its Minimum Annual Guarantees to the County commencing Fiscal Year 2017/18 upon arrival of the *MSC Seaside* as further described below; and

WHEREAS, the County agrees to make certain terminal improvements to Terminal F to accommodate the *MSC Seaside* with such improvements capped at \$25 million (inclusive of the cost of new boarding bridges); and

NOW, THEREFORE, 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 Amendment No. 1 ("Amendment No. 1 Effective date") is conditioned first upon execution of this Amendment No. 1 by MSC and then, subsequently, approval of this Amendment No. 1 by the Miami-Dade County Board of Commissioners and the first to occur of either (1) the expiration of any applicable Mayoral Veto period, or (2) the approval and execution of this Amendment No. 1 by the Mayor or the Mayor's Designee, and the filing of such approval with the Clerk of the Board of County Commissioners.
2. Upon the Amendment No. 1 Effective Date, Section 4 of the Original Agreement is amended such that (1) the Original Agreement shall expire at 12:01 a.m. on October 1, 2027 upon the same terms and conditions in the Original Agreement except as amended in this

Amendment No. 1, and (2) MSC shall have the option to request an extension to the Amended Agreement for one (1) additional five year term ("Renewal Term") conditioned upon MSC providing written notice to the County at least twenty-seven (27) months prior to the expiration of the then-existing term, but the terms of such potential extension shall be subject to future negotiations and approval by the Parties hereto, and, in the case of the County, shall be subject to approval of the Board of County Commissioners via duly enacted resolution.

3. Section 3(a)(l) of the Original Agreement relating to Terminal Use shall be amended to read:

The County hereby grants to MSC Preferential Berthing Rights to utilize Terminal F for MSC vessels on Saturdays year-round during the Term. Once the *MSC Seaside* arrives at the Port of Miami (anticipated to be December 2017), MSC shall use the Port of Miami as the *MSC Seaside's* year round home port with year round weekly sailings on Saturdays from Terminal F. Upon the arrival of the *MSC Seaside*, MSC still intends to berth the *MSC Divina* seasonally at the Port of Miami. The *MSC Divina* Berth Schedule ("Exhibit A") sets forth the dates when MSC intends to berth the *MSC Divina* at the Port of Miami during Fiscal Year 2017/18. MSC shall have the priority right to berth the *MSC Divina* for embarkation and debarkation of its passengers at either Terminal F or G, based on availability as further described in Exhibit A. After Fiscal Year 2017/18, if MSC seeks to have the *MSC Divina* or another MSC vessel sail from the Port of Miami in addition to the *MSC Seaside*, the County will use its commercially reasonable efforts to schedule MSC vessel calls at Terminal F. However, the County shall have the right to schedule MSC vessel calls at another cruise terminal at the Port of Miami, provided that such use of that terminal will not interfere with preferential berthing rights of another cruise line, and further provided that the use of such other terminal is approved by MSC.

MSC has expressed an interest in obtaining an option to secure a year-round preferential berth on Sundays at PortMiami beginning Fiscal Year 2019/20. At the time this Amendment is effective and executed, the County is not able to commit to such berthing rights. However, the County agrees to inform MSC in writing, within eighteen (18) months from execution of this Amendment, if a year-round berth on Sundays beginning in Fiscal Year 2019/20 becomes available and provide MSC the right of first refusal for such berth. MSC may exercise such right of first refusal in writing upon ninety (90) days notice to the County. If MSC does not exercise such right of first refusal, such right will expire ninety (90) days after such written notice is provided by the County. Should a year-round berth on Sundays become available for MSC, and should MSC provide the notice of exercise of its first right of refusal, this Amendment shall be brought back to each Parties' respective Boards for approval outlining new guarantees (similar to the annual guarantee using 80% of expected wharfage and dockage commitments for a year-round vessel consistent with the commitments in this Agreement as amended).

4. Section 3(b)(i) of the Original Agreement relating to Wharfage Fees shall be amended to add a sentence at the end of the first paragraph reading:

The wharfage rate for Fiscal Year 2015/16 shall be \$11.32 per each passenger embarkation and \$11.32 per each passenger debarkation.

5. Section 3(b)(ii) of the Original Agreement relating to Dockage Fees shall be amended to add a sentence at the end of the first paragraph reading:

The dockage rate for Fiscal Year 2015/16 shall be \$0.35 per gross registered ton of any MSC vessel.

6. Section 3(b)(iv) shall be added to the Original Agreement reading:

(iv) Unitary Fee

The term "Unitary Fee" shall mean a per passenger fee charged per passenger embarkation and disembarkation in lieu of, and as an alternative to, passenger wharfage and ship dockage. Six months prior to the start of any fiscal year, MSC shall have the right to request that the County charge MSC a Unitary Fee to commence at the beginning of the next Fiscal Year. The County shall grant such request upon all the following express conditions being met: (1) MSC is current in all payment obligations owed to the County, (2) MSC is not otherwise in Default as provided in the Amended Agreement, and (3) the County and MSC are able to reach a mutually agreed upon amount to be paid as a Unitary Fee which may be subject to annual reconciliations. The amount of any mutually agreed upon Unitary Fee shall increase three percent (3%) annually compounded each subsequent Fiscal Year such Unitary Fee is in effect. If MSC seeks to terminate the County's use of a Unitary Fee charged to MSC, MSC shall provide written notice of such termination by July 1 of any Fiscal Year during the Term, and the termination shall be effective at the beginning of the Fiscal Year following such notice. Beginning on the effective date of the termination of the Unitary Fee, MSC shall pay the County the then applicable tariff dockage and wharfage rates as provided in Sections 3(b)(i) and (ii) above.

7. Section 3(c) shall be deleted in its entirety and shall be amended to read as follows:

(c) MSC Minimum Annual Guarantees

(i) Minimum Annual Passenger Guarantee

Commencing Fiscal Year 2013/14 and continuing each Fiscal Year during the Term until the arrival of the *MSC Seaside*, MSC shall have a Minimal Annual Guarantee of no less than 80,000 Passenger Movements through the Port each Fiscal Year. If MSC fails to meet this annual guarantee, it shall make a Shortfall Payment to the County within thirty (30) days of the end of the Fiscal Year in which the guarantee was not met. Shortfall payments will be based on the then applicable wharfage rates for the given Fiscal Year times the number of passenger moves below the Minimum Annual Guarantee of 80,000 passengers annually. Commencing with the arrival of *MSC Seaside* in Fiscal Year 2017/18 and every fiscal year thereafter during the Term or Renewal Term, MSC shall guarantee a minimum of 425,000 Annual Passenger Movements. If MSC fails to meet this annual guarantee, it shall make a Shortfall Payment to the County within thirty (30) days of the end of the Fiscal Year in which the guarantee was not met. Shortfall payments will be based on the then applicable wharfage rates for the given Fiscal Year times the number of passenger moves below the applicable Minimum Annual Passenger Guarantee for the given Fiscal Year or, in the case a Unitary Fee is implemented, then shortfall payments will be based on the then applicable Unitary Fee rate.

(ii) Minimum Annual Dockage Guarantee

Commencing with the arrival of the *MSC Seaside* in Fiscal Year 2017/18 and for every Fiscal Year thereafter during the Term or the Renewal Term, MSC shall guarantee the County minimum annual dockage revenue calculated based on the then-existing dockage Tariff rate (subject to the annual rate escalation cap set forth in Section 3(b)(ii)) times the MSC Seaside's gross registered tonnage ("GRT"), times 52 (annual vessel calls) times .8 (80%) ("Minimum Annual Dockage Guarantee"). If MSC fails to meet the Minimum Annual Dockage Guarantee in any Fiscal Year during the remaining Operating Term or any Extension Term if exercised, as a sole remedy for such failure, MSC shall pay the County for any Minimum Annual Dockage Guarantee deficiency (hereafter, "Dockage Shortfall Payment") within thirty (30) calendar days of the end of the applicable Fiscal Year in which the Minimum Annual Dockage Guarantee is not met. In the case a Unitary Fee is implemented, then there shall be no Minimum Annual Dockage Guarantee.

(iii) Passenger Surplus

"Passenger Surplus" shall mean the number of Passenger Movements generated by the *MSC Seaside* (or another vessel in the same class or larger) in any Fiscal Year that exceeds MSC's Minimum Annual Guarantee, which may be used by MSC to offset shortfalls in subsequent years. During the Fiscal Year commencing October 1, 2017 and continuing through the Term, MSC shall have the right to accrue Passenger Surplus Movements. Such Passenger Surplus Movements may be applied in the Fiscal Year ending September 30, 2020 and continue through the Term. The maximum amount of Passenger Surplus Movements that MSC may accrue at one time is 150,000 passenger moves. Notwithstanding the foregoing, MSC shall be limited to applying a maximum of 75,000 Passenger Movements to its Minimum Annual Guarantee in any two consecutive Fiscal Years.

8. The County shall make capital improvements to Terminal F to accommodate the *MSC Seaside* and its increased passenger capacity. Such capital improvements, further defined in the attached Exhibit B, include an expansion of the terminal footprint, increased queuing and check-in capacity, additional seating, enlarged baggage collection area, horizontal circulation improvements, and passenger boarding bridges designed to accommodate the *MSC Seaside*. The cost of such improvements shall not exceed \$25,000,000.00, and in no event shall the County be responsible for the payment of any improvement cost(s) exceeding \$25,000,000.00. This cap is inclusive of the cost of modified and/or new passenger boarding bridges.
9. Section 3(e)(ii) of the Original Agreement relating to Parking Revenues shall be deleted in its entirety and amended to read as follows:

MSC's Parking Incentive shall be determined based on the proportion of MSC multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port in a given Fiscal Year during the Term. Embarkations and parking revenue associated with port-of-call vessels shall not be included in the calculation of the Parking Incentive, nor shall cruise passenger embarkations or parking revenue associated with daily cruises, non-revenue cruises, ferry services, cruises less than 24 hours in duration, cruises to nowhere, non-cruise daily parking, or any other category of service excluded from parking revenue share as per Port of Miami Tariff No. 010

be included in such calculation. As an example, if in a given Fiscal Year during the Operating Term, MSC's multi-day cruise passenger embarkations are ten percent (10%) of the Port's total multi-day cruise passenger embarkations then MSC will receive ten percent (10%) of Parking Revenues collected by the Port in such Fiscal Year. The Port shall remit Parking Revenues to MSC within sixty (60) days of the close of each fiscal quarter during the Operating Term provided MSC is in full compliance with all of its payment and performance obligations under this Agreement.

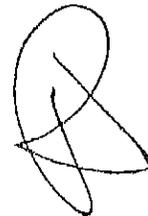
10. Marketing Incentive for year-round operations: In recognition of MSC's increased number of Miami ship calls and year-round sailings, the County will pay MSC a marketing incentive in FY 2015/16, FY 2016/17 and FY 2017/18 in the amount of one hundred seventy-five thousand (\$175,000) each fiscal year. These funds will be used by MSC to promote MSC's year-round Miami sailings. This incentive shall be in addition to any other financial incentives payable by the County to MSC under this Agreement.
11. Annual Marketing Incentive: During any Fiscal Year, if MSC exceeds its Minimum Annual Passenger Guarantee of 425,000 Passenger Movements, MSC shall qualify for the following per passenger Marketing Incentive calculated based on passenger wharfage and dockage for such Fiscal Year (or Unitary Fee, if applicable):

<u>Passenger Movements</u>	<u>Marketing Incentive</u> (Calculated on Passenger Wharfage and Dockage)
425,001 – 500,000	0.5%
500,001 – 575,000	1.0%
575,001 – 650,000	1.5%
650,001 – 725,000	2.0%
725,001 – 800,000	2.5%

The Marketing Incentive shall continue to increase by 0.5% for each additional 75,000 Passenger Movements until MSC reaches 2,600,000 Passenger Movements at which time the Marketing Incentive shall be capped at fifteen percent (15%) per Fiscal Year. The County shall pay MSC the applicable Marketing Incentive within sixty (60) days of the end of said Fiscal Year.

12. The Original Agreement, as amended by this Amendment No. 1 and all of the terms, conditions, and warranties contained therein, are hereby reaffirmed and shall continue in full force and effect except as specifically modified by this Amendment No. 1.
13. The WHEREAS clauses set forth above are incorporated into the body of this Amendment No. 1 as if fully set forth herein.
14. This Amendment No. 1 shall be governed by Florida Law.

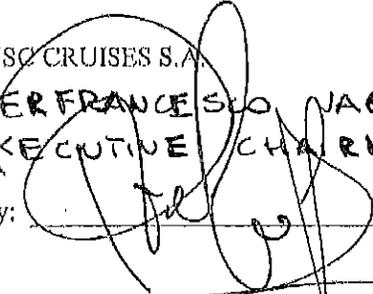
[Signature page follows]



IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed in their respective corporate names by the appropriate officers, and have their respective corporate seals to be affixed hereto, all as of the day and year first written above,

MSC CRUISES S.A.
PIERFRANCESCO NAGO
EXECUTIVE CHAIRMAN

MIAMI-DADE COUNTY, FLORIDA

By:  _____

ATTEST:

ATTEST:

By: GIANLUCA SUPRANI
GLOBAL PORT DEV.

Clerk of the Board



Approved as to form and legal sufficiency

Exhibit A
MSC Divina Berth Schedule
FY 2017/18

OCTOBER 2017

Oct 7
Oct 14
Oct 21
Oct 28

NOVEMBER 2017

Nov 4
Nov 11
Nov 18
Nov 25

DECEMBER 2017

Dec 2
Dec 9
Dec 16
Dec 23*

JANUARY 2018

Jan 3
Jan 14
Jan 25

FEBRUARY 2018

Feb 4*
Feb 15
Feb 25

MARCH 2018

Mar 8
Mar 18*
Mar 29

APRIL 2018

Apr 8

*The County's Seaport Department has confirmed berth availability on the above dates with the exception of the annotated dates above (December 23, 2017; February 4, 2018; March 18, 2018). At the time this Amendment is executed, the Seaport Department is working to confirm berthing options for the *MSC Divina* on the referenced annotated dates, including temporary facilities. Notwithstanding this effort by the Seaport Department, the County shall not be liable to MSC for any damages, claims, lost profits, costs, or other liability incurred by MSC if the County's Seaport Department is unable to confirm berthing options for the *MSC Divina* on the annotated dates.

Exhibit B
Terminal F Improvements for MSC Seaside

To accommodate the increased passenger volume of the Seaside vessel, the County will make certain capital improvements to Cruise Terminal F no later than December 1, 2017. The cost of such improvements will be capped at \$25 Million inclusive of Passenger Board Bridge(s). It will be necessary to expand the current footprint of Terminal F to include the following:

<u>Embarkation</u>
New and Expanded Bag Drop-off and Holding Area
New Entry/Queuing Hall with Security Check-in Area
New Passenger Ticketing and Check-In Area
Expanded Waiting and Seating Area
Additional seating capacity
<u>Debarcation</u>
Expanded baggage laydown area
Passenger Loading
Passenger Boarding Bridge Gangway(s)
New Horizontal Circulation
New Vertical Circulation
Ground Transportation Improvements, street-side
Wayfinding Signage

