

# MEMORANDUM

Agenda Item No. 8(J)(1)

---

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

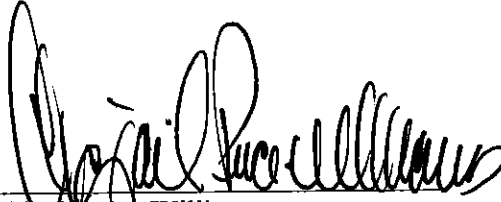
**DATE:** July 10, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution approving and authorizing the County Mayor to execute Amendment No. 2 to the Preferential Berthing Agreement between Miami-Dade County and MSC Cruises S.A. with an estimated positive fiscal impact to the County in the amount of \$2,000,000.00 in increased passenger revenues, subject to a three percent annual increase, and requiring the County to expend \$3,500,000.00 in capital improvements to cruise terminal F; approving a non-binding Memorandum of Understanding between Miami-Dade county and MSC Cruises S.A.; authorizing the County Mayor to execute an Addendum to Amendment no. 2 to implement a passenger capital recovery surcharge on MSC Cruises S.A., to be used by the County to fund the design, permitting, and construction of cruise terminal AAA, and an associated multi-level parking garage, and other related cruise terminal and marine infrastructure; and authorizing the County Mayor to exercise any cancellation, termination, renewal, and other rights and provisions contained in the original agreement as amended by Amendment Nos. 1 and 2

---

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

  
Abigail Price-Williams  
County Attorney

APW/lmp

# Memorandum



**Date:** July 10, 2018

**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name of the Mayor.

**Subject:** Resolution Approving and Authorizing the Execution of Amendment No. 2 to the Preferential Berthing Agreement Between Miami-Dade County and MSC Cruises S.A. and a Memorandum of Understanding Authorizing Negotiation of a Potential New Cruise Terminal AAA Development Agreement

## **Recommendation**

It is recommended the Board of County Commissioners ("Board") approve the accompanying resolution approving and authorizing the execution of Amendment No. 2 ("Second Amendment") to the Preferential Berthing Agreement between Miami-Dade County ("County") and MSC Cruises S.A. ("MSC") and a Memorandum of Understanding authorizing negotiation of a potential new Cruise Terminal AAA development agreement.

## **Scope**

PortMiami (the Port) is located within District 5. 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 item accomplishes two objectives: (1) authorizes Amendment No. 2 to the Preferential Berthing Agreement with MSC, which, among other things, modifies preferential berthing rights, minimum annual guarantees, and the term of the agreement, and (2) approves a Memorandum of Understanding (MOU) authorizing negotiation of a development agreement with MSC relating to the construction and use of new Cruise Terminal AAA.

1. MSC currently has Preferential Berthing Rights at Cruise Terminal F on Saturdays year-round. This Amendment No. 2 further provides MSC with Preferential Berthing Rights on Sundays at New Terminal C or Terminal F, at the Port's discretion, commencing Fiscal Year 2019 and 2020. Upon the arrival of the MSC Meraviglia in November 2019, MSC shall increase its Minimum Annual Guarantee to the County to 650,000 Passenger Movements each fiscal year through the Term (from its current guarantee of 425,000 Annual Passenger Movements). This Agreement is expected to generate approximately \$14 million in gross revenues during Fiscal Year 2019. However, commencing with the arrival of the MSC Meraviglia in November 2019, the Agreement is expected to generate \$16 million in Fiscal Year 2020. Annual revenue will increase by three percent each year of the Term.

The County shall continue to provide MSC a share of its parking revenue and an annual marketing incentive, similar to incentives with other cruise line agreements. Such incentives to MSC are expected to be approximately \$1.9 million for parking and \$350,000 for marketing during Fiscal Year 2019.

Amendment No. 2 provides for a new incentive to MSC based on cargo volumes generated by Mediterranean Shipping Company at the Port. This cargo incentive, which shall commence in Fiscal Year 2018 and 2019, is unique to MSC as it is the only port customer bringing both cruise and cargo business to the Port. This cargo incentive, as further outlined below in this memorandum, is expected to be approximately \$184,000 in FY 2019.

The County shall also make certain capital improvements to Terminal F, including an Audio Visual System and two Intermodal Canopy Systems, which are estimated to cost a total of approximately \$3.5 million.

2. The MOU between the Parties outlines the intent to expand cruise facilities at the Port by authorizing negotiation of a development and use agreement with MSC regarding the construction, funding, and use of new Cruise Terminal AAA and MSC's proposed increased passenger throughput commitment at the Port. The construction of such facility will allow the Port to expand its cruise business by allowing MSC to homeport the largest MSC vessel currently on order that is capable of carrying approximately 7,000 passengers (based on full capacity). The project is further explained in the Background section of this memorandum.

MSC is current on all its financial obligations to the Port and their account is in good standing.

#### **Track Record/Monitor**

The Seaport Department staff members responsible for monitoring the Second Amendment are Juan Kuryla, Port Director and CEO; Hydi Webb, Deputy Port Director; and Andy Hecker, Port CFO.

#### **Background**

MSC, the world's largest privately-owned cruise line, and fourth largest cruise line overall, operates a fleet of 15 cruise vessels with another nine cruise vessels on schedule for delivery by 2027. MSC Cruises is 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.

On January 24, 2012, the Board approved Resolution No. R-38-12, which authorized the execution of a Preferential Berthing Agreement with MSC. The Agreement had a three year term with two one-year renewal options. The Agreement has been profitable for both parties as it has provided the Port with significant guaranteed passenger volumes and revenues in exchange for preferential berthing rights at Terminal F on Saturdays and financial incentives based on MSC's annual guarantee and actual annual passenger throughput performance.

On December 1, 2015, the Board approved Resolution No. R-1079-15 (Amendment No. 1), which authorized the extension of the base agreement by 11 years, to 2027, with a five-year renewal option, and provided additional marketing incentives payments with a \$175,000 marketing fee for each of the first three years (expires after Fiscal Year 2018) and an Annual Marketing Payment based on MSC's guaranteed passenger volume, in exchange for the arrival of the year-round MSC Seaside in FY 2018 to the end of the Term and an increased Minimum Annual Guarantee to 425,000 annual passenger moves (from 80,000 annual passenger

moves). The Port also committed to making capital improvements to Cruise Terminal F to accommodate the MSC Seaside and its 4,140-passenger capacity (based on double occupancy).

With its aggressive new-build program, MSC continues to seek growth in the North American Market. MSC currently homeports two vessels at the Port: MSC Seaside year-round on Saturdays and seasonal 10- and 11-day sailings with the MSC Divina. Although not committed contractually, MSC recently announced weekly sailings on Mondays with the MSC Armonia beginning December 2018. This is a unique itinerary as the MSC Armonia will be the Port's first vessel to have weekly seven-day cruises on Mondays. This Amendment No. 2 provides for an additional berth on Sundays, allowing MSC to homeport the MSC Meraviglia at the Port seasonally commencing fall of 2019.

It is important to note, in April 2018, via Resolution No. R-291-18, the Board approved an Amended and Restated Cruise Terminal Agreement with Norwegian Cruise Line (NCL), which, among other things, provided for NCL to construct new Cruise Terminal B and to relinquish its Preferential Berthing Rights at Terminal C to the County upon substantial completion of New Terminal B. As previously indicated to the Board, the MSC Meraviglia will occupy the Sunday berth given back to the County, providing for new revenues to the County.

Responding to the opportunity to homeport the MSC Meraviglia in Miami, this proposed Amendment No. 2 to the Agreement is respectfully recommended for approval. Under the proposed terms, MSC commits the following to the County:

- Passenger Guarantees will remain at a minimum of 425,000 Annual Passengers Movements. However, upon the Meraviglia Arrival Date in Fiscal Year 2019/20, MSC shall increase the guarantee to a minimum of 650,000 Annual Passenger Movements every fiscal year during the Term.
- MSC will homeport the MSC Meraviglia or a vessel of similar size and capacity in Miami beginning fall of 2019 through the Term with seven-day sailings on Sundays.
- The wharfage rate for Fiscal Year 2018/19 shall be \$12.37 per each passenger embarkation and per each passenger disembarkation and increase annually by three percent.
- The dockage rate for Fiscal Year 2018/19 shall be \$.38 per gross registered ton of any MSC vessel.
- The County may increase the annual passenger wharfage and dockage rates no more than three percent compounded each fiscal year.
- Commencing Fiscal Year 2018, MSC shall guarantee Minimum Annual Dockage revenue calculated based on the then-existing dockage Tariff rate (subject to escalation) times the MSC Seaside's gross registered tonnage, times 52 annual vessel calls, times .80 (80% "Minimum Annual Dockage Guarantee"). Upon its arrival, the MSC Meraviglia shall be subject to the same minimum annual dockage guarantee with the same formula corresponding with 26 seasonal vessel calls.
- The Parties have modified the current definition of Exclusive Homeport in South Florida to exclude Brevard County (Port Canaveral) and provide a waiver under certain circumstances. MSC agrees PortMiami shall be its Exclusive Homeport in South Florida (Palm Beach, Broward, Monroe, and Miami-Dade Counties) for all MSC vessels and MSC shall not homeport any MSC vessels in another South Florida port throughout the term of this agreement. MSC may request a waiver of the requirement if the Port is not able to

provide MSC with a suitable terminal for the berth of a scheduled Port call, or within 90 days after receipt of a request to Home Port a new vessel.

With written consent of MSC, the Port may implement a future passenger capital recovery surcharge on MSC, in an amount per embark and debark to be agreed upon by the Port Director and MSC, to be used to fund new terminal infrastructure, planning, design, permitting, engineering, and/or construction costs for or associated with such new Terminal AAA.

In order for the Port to receive this new ship and pledge, MSC will receive the following incentives/improvements:

- MSC shall continue to have year-round preferential berthing rights at Terminal F on Saturdays, and will now have the first right to homeport its vessels at Terminal F on Sundays should Preferential Rights revert back to the Port in the future.
- MSC shall use new Terminal C (current Terminals B&C combined) or Terminal F for sailings on Sundays, at the discretion of the Port, commencing on the MSC Meraviglia Arrival Date.
- The County commits to making certain capital improvements to Terminal F. These improvements, expected to cost approximately \$3.5 million, include an audio visual system in the interior of Terminal F (completed in February 2018) and an intermodal canopy system.
- In consideration of the cargo volumes generated by Mediterranean Shipping Company at the Port, MSC may qualify for an additional incentive commencing Fiscal Year 2019 through the Term. During any fiscal year that MSC shipping processes more than 100,000 Twenty Foot Equivalent Units (TEUs) through PortMiami per fiscal year, and MSC meets its Minimum Annual Guarantee in that same fiscal year, MSC shall receive an additional marketing incentive based on its annual cargo throughput of two percent of its passenger revenues, not to exceed \$400,000 in any Fiscal Year.
- MSC shall continue to receive annual marketing incentives during any Fiscal Year when MSC exceeds its Minimum Annual Guarantee and a parking incentive 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. Similar incentives are provided to all major cruise lines at the Port.

In addition to this Amendment to the Preferential Berthing Rights Agreement, the Parties have agreed to enter into a non-binding Memorandum of Understanding (MOU), attached as Exhibit C to the Amendment, authorizing the parties to commence negotiation of a development and preferential use agreement for the design, funding, construction, and use of new cruise Terminal AAA, including negotiation of an expanded MSC passenger throughput commitment at the Port, as well as potential amendments to MSC's current Preferential Berthing Agreement, including:

- MSC shall have the First Right to Negotiate for the construction of a new terminal on the County land identified in Exhibit C-1. While the Parties are in negotiation for the construction of the Terminal AAA Project, which negotiation shall not exceed beyond December 1, 2018, the Port shall not commit the use of the land for any new uses that are inconsistent with the development of a new terminal with MSC.
- MSC intends for the Project to serve as a homeport to its largest vessel currently on order, the World-class, capable of carrying approximately 7,000 passengers (maximum capacity) and with LNG propulsion technology.

- The project contemplates an approximately nine-acre cruise ship pier complex capable of accommodating vessels up to 1,150 feet in a homeport operational capacity, including a new bulkhead and apron, terminal complex, provision staging and loading areas, bus and taxi staging areas, and a parking garage of a suitable size.
- As a pre-condition to undertake the terminal AAA project, the Port would first need to acquire rights to the necessary cargo land, currently under agreement with Terminal Link (Miami) LLC. The Port is currently finalizing negotiations with Terminal Link and such amendment will be presented to the Board for approval upon completion.
- The Parties shall agree on a project timeline including financial commitments (which may include a passenger capital recovery surcharge), commencement of construction, and substantial completion dates with the goal of Project completion and vessel operations beginning October 2022.
- The existing Terminal Usage Agreement between the County and MSC shall be amended and presented to the Board for approval to, among other things, extend its term, modify MSC's Minimum Annual Guarantees and Preferential Berthing Rights, and provide for a full financing model.

The construction of new Terminal AAA shall allow MSC to generate more than 1 million additional passengers over its current commitment to the County.

This MOU shall be effective until one of the following occurs: (i) execution by the Board of the binding New Amended and Restated MSC Agreement or an equivalent amendment, (ii) mutual agreement of the Parties to terminate, or (iii) December 1, 2018 unless the Parties mutually agree in writing to continue negotiations beyond the December 1, 2018 termination date at the discretion of the Port Director and MSC.

The effective date of Amendment No. 2 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. The Term of the Agreement is amended by an extension of two years to October 1, 2029 with two additional five-year renewal options.

**Delegated Authority**

The resolution authorizes the County Mayor or County Mayor's designee to (1) execute the Amended and Restated Cruise Terminal Agreement on behalf of Miami-Dade County and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, berthing requests, and/or other County rights conferred in the Agreement and (2) implement a future passenger capital recovery surcharge on MSC, in an amount to-be-determined per passenger embark and per passenger debark, to be used to fund design, permitting, and construction of new Terminal AAA and related marine, parking and terminal infrastructure.



Jack Osterholt  
Deputy Mayor

6

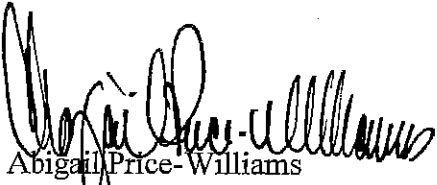


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** July 10, 2018

**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)  
7-10-18

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE AMENDMENT NO. 2 TO THE PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MSC CRUISES S.A. WITH AN ESTIMATED POSITIVE FISCAL IMPACT TO THE COUNTY IN THE AMOUNT OF \$2,000,000.00 IN INCREASED PASSENGER REVENUES, SUBJECT TO A THREE PERCENT ANNUAL INCREASE, AND REQUIRING THE COUNTY TO EXPEND \$3,500,000.00 IN CAPITAL IMPROVEMENTS TO CRUISE TERMINAL F; APPROVING A NON-BINDING MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND MSC CRUISES S.A.; AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE AN ADDENDUM TO AMENDMENT NO. 2 TO IMPLEMENT A PASSENGER CAPITAL RECOVERY SURCHARGE ON MSC CRUISES S.A., TO BE USED BY THE COUNTY TO FUND THE DESIGN, PERMITTING, AND CONSTRUCTION OF CRUISE TERMINAL AAA, AND AN ASSOCIATED MULTI-LEVEL PARKING GARAGE, AND OTHER RELATED CRUISE TERMINAL AND MARINE INFRASTRUCTURE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY CANCELLATION, TERMINATION, RENEWAL, AND OTHER RIGHTS AND PROVISIONS CONTAINED IN THE ORIGINAL AGREEMENT AS AMENDED BY AMENDMENT NOS. 1 AND 2

**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 and authorizes the County Mayor or the County Mayor's designee to execute Amendment No. 2 ("Amendment No. 2") for and on behalf of Miami-Dade County, in substantially the form attached hereto as Exhibit A and made part hereof, to the

Preferential Berthing Agreement (“Original Agreement”) between Miami-Dade County and MSC Cruises S.A. with an estimated positive fiscal impact to the County in the amount of \$2,000,000.00 in increased passenger revenues, subject to a three percent annual increase, and requiring the County to expend \$3,500,000.00 in capital improvements to cruise terminal F.

**Section 2.** Approves the non-binding Memorandum of Understanding between the County and MSC Cruises S.A. attached as Exhibit C to attached Amendment No. 2 and authorizes the County Mayor or the County Mayor’s designee to execute such non-binding Memorandum of Understanding on behalf of Miami-Dade County, in substantially the form attached to Amendment No. 2 as Exhibit C thereto.

**Section 3.** Authorizes the County Mayor or the County Mayor’s designee to execute an addendum to Amendment No. 2 to adopt a passenger capital recovery surcharge to be paid by MSC Cruises S.A., to be used by the County to fund the design, permitting, and construction of cruise terminal AAA, and an associated multi-level parking garage, and other related cruise terminal and marine infrastructure.

**Section 4.** Authorizes the County Mayor or County Mayor’s designee to exercise any cancellation, termination, renewal, and other rights and provisions contained in the Original Agreement as amended by Amendment Nos. 1 and 2.

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:

- |                                     |                      |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman      |                      |
| Audrey M. Edmonson, Vice Chairwoman |                      |
| Daniella Levine Cava                | Jose "Pepe" Diaz     |
| Sally A. Heyman                     | Eileen Higgins       |
| Barbara J. Jordan                   | Joe A. Martinez      |
| Jean Monestime                      | Dennis C. Moss       |
| Rebeca Sosa                         | Sen. Javier D. Souto |
| Xavier L. Suarez                    |                      |

The Chairperson thereupon declared the resolution duly passed and adopted this 10<sup>th</sup> day of July, 2018. 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.           *SBB*          

Steven B. Bass

## Amendment No. 2 to the Preferential Berthing Agreement Between Miami-Dade County and MSC Cruises S.A.

THIS AMENDMENT No. 2 ("Amendment No. 2") to the January 24, 2012 Preferential Berthing 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"), as amended, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, 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.) (the "Original Agreement"); and

WHEREAS, by Resolution No. 1079-15, the Original Agreement was amended by Amendment No. 1 dated December 1, 2015 ("Amendment No. 1"). The Original Agreement as amended by Amendment No. 1 shall be referred to as the "Agreement"; and

WHEREAS, the Parties wish to extend the term of the Agreement; and

WHEREAS, MSC agrees to homeport the MSC Meraviglia at PortMiami commencing fall of 2019, with seven (7) day sailings on Sundays; and

WHEREAS, MSC agrees to increase its Minimum Annual Guarantees to the County commencing Fiscal Year 2019/20 upon arrival of the MSC Meraviglia as further described below; and

WHEREAS, the County shall make certain capital improvements to Terminal F as set forth herein; and

WHEREAS, to accomplish these objectives, the Parties wish to amend the Agreement by this Amendment No. 2, all as more particularly set forth below,

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. This Amendment shall be effective upon the effective date of the resolution of the Board of County Commissioners approving its execution (the "Amendment Number 2 Effective Date").
2. The term of the Agreement is amended such that the Agreement shall expire at 12:01 a.m. on September 30, 2029. MSC shall have the option to request an extension to the Agreement for two (2) additional five year terms ("Renewal Term") conditioned upon MSC providing written notice to the County at least twenty-seven (27) months prior to September 30, 2029, or the then existing term, but the terms of such potential extension shall be subject to future negotiations and approval by the Parties, and, in the case of the County, shall be subject to approval of the Board of County Commissioners by duly enacted resolution.
3. Section 2 of the Agreement shall be amended to add the following definition:

“Meraviglia Arrival Date” shall mean the date of arrival of the MSC Meraviglia at Port Miami, which commences its home port obligations under this Agreement. The Meraviglia Arrival Date shall be November 10, 2019 unless otherwise agreed upon in writing by the Port Director.

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

The County shall grant MSC Preferential Berthing Rights at Terminal F for MSC Vessels on Saturdays year-round during the Term. Should Preferential Rights at Terminal F revert back to the Port on Sundays (currently under contract with Virgin Voyages for ship operations commencing March 2020), MSC shall have the first right of refusal to homeport its vessels at Terminal F on Sundays in addition to its Saturday right.

Commencing on the Meraviglia Arrival Date, and throughout the remaining Term, MSC shall use PortMiami as the Home Port for the MSC Meraviglia or a MSC Vessel of similar or greater size and capacity, with sailings on Sundays from new Terminal C (currently Terminals B & C combined) or Terminal F at the Port’s discretion.

Once the MSC Meraviglia arrives at PortMiami, and in addition to the MSC Seaside, MSC anticipates continuing to berth other MSC Vessels seasonally at PortMiami with 10- and 11-day itineraries. Exhibit A sets forth the Berth Schedule for the dates when MSC intends to berth the MSC Divina at PortMiami during 2018 and 2019. After March 2019, if MSC seeks to have the MSC Divina or another MSC Vessel sail from the Port in addition to the MSC Seaside and MSC Meraviglia, the County will use its commercially reasonable efforts to schedule MSC Vessel calls at Terminal F, if available. However, the County shall have the right to schedule MSC Vessel calls at another cruise terminal at PortMiami, 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 additional berth to accommodate a third weekend vessel beginning Fiscal Year 2022/23. Currently, the County is not able to commit to such berthing. Thus, a Memorandum of Understanding (MOU) is under consideration between MSC and the County, attached as Exhibit C to this Amendment, providing MSC the First Right to Negotiate for the potential construction of a new terminal east of the upcoming Terminal AA to be designated as Terminal AAA. The terminal would serve as a homeport for up to the largest MSC vessel currently on order that is capable of carrying approximately 7000 passengers. In furtherance of the foregoing and with the prior written consent of MSC, the Port may implement a future passenger capital recovery surcharge on MSC passengers, in an amount per embark and debark to be agreed upon by the Port Director and MSC, to be used to fund new terminal infrastructure planning, design, permitting, engineering and/or construction costs for or associated with such new Terminal AAA.

5. The last sentence of the first paragraph of Section 3(b)(i) of the Agreement relating to Wharfage Fees shall be amended to read as follows:

The wharfage rate for Fiscal Year 2017/18 shall be \$12.01 per each passenger embarkation and \$12.01 per each passenger debarkation.

6. The last sentence of the first paragraph of Section 3(b)(ii) of the Agreement relating to Dockage Fees shall be amended to read as follows:

The dockage rate for Fiscal Year 2017/18 shall be \$0.37 per gross registered ton of any MSC Vessel.

7. Section 3(c) shall be amended to read as follows:

(c) MSC Minimum Annual Guarantees and Homeport Commitment

(i) Minimum Annual Passenger Guarantee

Commencing Fiscal Year 2017/18, MSC shall guarantee a minimum of 425,000 Annual Passenger Movements. In addition, upon the Meraviglia Arrival Date in Fiscal 2019/20, MSC shall increase the guarantee to a minimum of 650,000 Annual Passenger Movements every fiscal year during the Term. 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 Fiscal Year 2017/18, 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"). Additionally, upon the Meraviglia Arrival Date in Fiscal Year 2019/20, the same minimum annual dockage guarantee and formula shall apply towards MSC Meraviglia corresponding with 26 seasonal vessel calls. Should MSC fail 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.

8. Section 3(d) of the Agreement shall be amended to read as follows:

(d) Exclusive Homeport. MSC agrees that the Port shall be the exclusive Home Port in South Florida (defined as Palm Beach, Broward, Monroe and Miami-Dade Counties) for all MSC vessels and MSC agrees not to Home Port any MSC vessels in another South Florida port through the Term of this Agreement, and also during any renewal term that may be mutually agreed upon and approved pursuant to the requirements hereof; provided, however, MSC shall be entitled to a waiver of the Exclusive Homeport clause in the event (1) the Port cannot accommodate a MSC Vessel for a berth for a scheduled Home Port call under this Agreement or (2) the Port cannot, within ninety (90) days after receipt of a request from MSC to Home Port a new vessel at the Port, confirm in writing booking for a suitable Port terminal for MSC's schedule of Home Port calls for such vessel. In such instances, MSC, at its sole option, may commit the subject vessel call to another port, or be Home Ported at another port for such period of time as MSC in its sole discretion shall deem commercially necessary, such vessel shall be deemed excluded from this Exclusive Homeport provision

and in all such cases MSC shall not be deemed to be in breach of this Exclusive Homeport provision. This clause shall supersede any previous Exclusive Homeport agreements between MSC and the Port.

9. Cargo Incentives: In consideration of the cargo volumes generated by Mediterranean Shipping Company S.A. ("MSC Shipping", an affiliate of MSC) at PortMiami, and the revenue that will be generated by the County for MSC Shipping's Twenty Foot Equivalent Unit ("TEU") throughput volumes at the Port during the Term of this Agreement, the County shall pay MSC an annual incentive based upon the annual TEU volumes of MSC Shipping, as follows: commencing Fiscal Year 2018/2019 and continuing through the Term, during any fiscal year that MSC Shipping processes more than 100,000 TEUs through PortMiami per Fiscal Year, and MSC meets its Minimum Annual Passenger Guarantee in that same Fiscal Year, MSC shall receive an additional marketing incentive of two percent (2%) of its passenger wharfage payments to PortMiami for that same fiscal year, not to exceed \$400,000 in any Fiscal Year. The County shall pay MSC the applicable incentive within sixty (60) days of the end of said fiscal year. This incentive shall be in addition to any other financial incentives payable to the County to MSC under this Agreement.

10. Section 11 of Amendment No. 1 shall be amended to read as follows:

Marketing Incentives: MSC shall continue to receive annual marketing incentives during any Fiscal Year, if MSC exceeds its Minimum Annual Guarantee during that given Fiscal Year, calculated on passenger wharfage and dockage for such Fiscal Year, as follows:

<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.

11. Section 9 of Amendment No. 1 shall remain the same.

Parking Incentive: MSC shall also continue to receive Parking Incentive to 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.

12. The County, at its sole cost and expense, shall make certain capital improvements to Terminal F. These improvements are the following:

(i) Audio Visual System in the interior of Terminal F: Terminal F shall include an Audio Visual Display system for video signal and digital signage distribution. The system includes approximately 39 large displays throughout both the renovated and new addition of Terminal F along with displays at each ticket counter position. These displays include wayfinding, visual boarding announcements, entertainment, and

security information along with cruise line furnished content. The system will allow the terminal to be branded appropriately for multiple cruise lines. Such audio visual system package was completed on February 23, 2018.

(ii) Intermodal Canopy Systems, as specified in Exhibit B herein.

13. All the terms, conditions, and warranties contained in the Original Agreement, as amended by Amendment Number 1, which are not amended in this amendment are hereby reaffirmed and shall continue in full force and effect.
14. The WHEREAS clauses set forth above are incorporated into the body of this Amendment No. 2 as if fully set forth herein.
15. This Amendment No. 2 shall be governed by Florida Law.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. <sup>2</sup> 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.

MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_

MARCELIANO MID  
CHIEF LEGAL OFFICER

Clerk of the Board

\_\_\_\_\_. Approved as to form and legal sufficiency

Exhibit A  
Berth Schedule - MSC Fantasia-Class  
2018-19

The following are confirmed calls for the *MSC Divina* at PortMiami:

OCTOBER 2018

Oct 28

NOVEMBER 2018

Nov 18

DECEMBER 2018

Dec 9

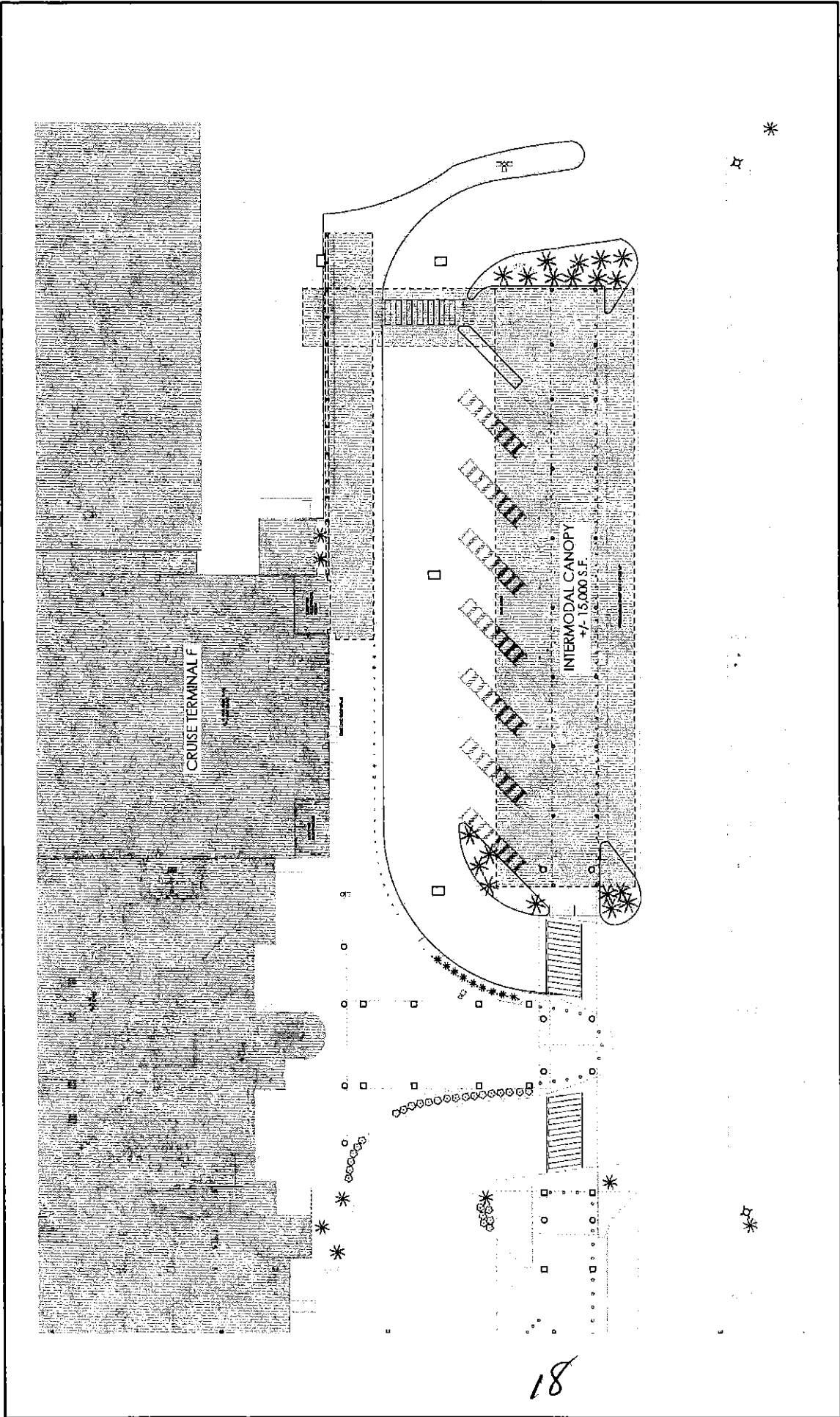
Dec 30

FEBRUARY 2019

Feb 10

MARCH 2019

Mar 3



18

CRUISE TERMINAL F  
INTERMODAL CANOPY

**EXHIBIT B**

**EXHIBIT C**

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is made this \_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date"), by and between:

- A. **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as ("County")), of the first part, and;
- B. **MSC Cruises S.A. (f/k/a MSC Crociere S.A.)**, a Swiss corporation, (hereinafter referred to as "MSC"), of the second part.

Each of the above parties shall be hereinafter referred to as a "Party" and collectively as the "Parties".

**RECITALS:**

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

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

**WHEREAS**, MSC is a Cruise Line currently operating 15 ships; and

**WHEREAS**, MSC has an aggressive new-build program with 9 vessels scheduled for delivery by 2027; and

**WHEREAS**, MSC is currently homeporting two vessels at PortMiami, MSC Divina and MSC Seaside, and is bringing an additional vessel, MSC Meraviglia, commencing fall of 2019; and

**WHEREAS**, MSC desires to increase its berthing capacity at PortMiami by attaining rights at a new Cruise Terminal ("Project") preliminary located to the east of upcoming Terminal AA to be designated as Terminal AAA; and

**WHEREAS**, PortMiami wishes to allow for the growth of MSC, its valued business partner, within the Port by offering it a first right to negotiate for certain identified land, all subject to the terms and conditions more particularly set forth below; and

**WHEREAS**, on January 24, 2012, via Resolution No. R-38-12, the Miami-Dade County Board of County Commissioners approved a Preferential Berthing Agreement with MSC, as later amended with Amendment No. 1 dated December 1, 2015 via Resolution No. R-1079-15 (the "MSC Preferential Berthing Agreement"); and

**WHEREAS**, the Parties seek to amend the MSC Preferential Berthing Agreement to, among other things, incorporate the terms of this MOU

## EXHIBIT C

WHEREAS, MSC is planning to relocate its existing cruise corporate offices from Broward County to Miami-Dade County (preferably at Port Miami) and the Parties are interested in working together in respect of MSC's plans; and

WHEREAS, the Parties desire to enter into this non-binding MOU which contains a general framework for negotiations of future agreement(s) to be presented to the Board of County Commissioners ("Board") for its approval.

NOW THEREFORE, the understanding of the Parties is as follows:

### 1. First Right to Negotiate

The Port agrees that MSC shall have the First Right to Negotiate for the construction of a new terminal in the County land identified in Exhibit C-1 attached hereto and incorporated herein by this reference ("the Site"). The "First Right to Negotiate" shall be defined as the commitment of the Port and MSC to enter into and conclude negotiations for the construction of the Project in substantially the terms outlined in this Memorandum of Understanding. For so long as the parties are in negotiation for such construction, which period shall not exceed beyond December 1, 2018, the Port agrees not to commit the Site for any new uses or purposes that are inconsistent with the proposed development of a new terminal by MSC. MSC intends for the Project to serve as a homeport for up to the largest MSC vessel currently on order that is capable of carrying approximately 7,000 passengers. MSC shall notify the County immediately of any deployment plans for its fleet that would reduce or eliminate MSC's need to occupy the Site, whereupon the First Right to Negotiate and the County's commitments hereunder shall immediately expire.

### 2. Project Description

The following are general guidelines of the transaction to be negotiated between the Port and MSC and shall be binding only to the extent contained in formal contract documents to be approved by the governing entities of the respective parties:

- (a) The Site is intended to be approximately 9 acres located preliminary east of Terminal AA, which is more particularly identified in the attached Exhibit C-1. The Project shall consist of a cruise ship pier complex capable of accommodating vessels of up to 1,150 feet in a homeport operational capacity, including a new bulkhead and apron, terminal complex, provision staging and loading areas, bus and taxi staging areas, and a parking garage suitable for MSC's high-capacity vessels. The Project will also accommodate an efficient vehicular traffic flow to the site that will also take into account impact from neighboring Terminals A and AA.
- (b) Development of the Site for this Project is expressly conditioned on the County's ability to acquire the necessary cargo land, which is part of the Site and currently under agreement with Terminal Link (Miami) LLC.

## EXHIBIT C

- (c) The Parties shall agree on a project timeline including financial commitments (which may include a passenger capital recovery surcharge), commencement of construction, and substantial completion dates, with the understanding that the Parties shall use commercially reasonable efforts to complete the Project with vessel operations commencing October 2022.
- (d) The Parties shall attempt to amend the existing MSC Preferential Berthing Agreement between the County and MSC to extend the term, modify MSC's Minimum Annual Guarantees and Preferential Berthing Rights, and take such other action as the Parties may reasonably contemplate to provide for the financing and mutual benefits for the transaction contemplated hereby.

### 3. Termination

This MOU shall be effective from the Effective Date until one of the following occurs:

- (a) Execution and delivery of a binding new amended and restated MSC Preferential Berthing Agreement or an equivalent amendment of the existing MSC Preferential Berthing Agreement (in either case, the "Updated MSC Preferential Berthing Agreement"); or
- (b) Mutual agreement of the Parties to terminate; or
- (c) December 1, 2018, unless the Port Director and MSC mutually agree in writing to extend negotiations beyond the December 1, 2018 termination of the MOU.

Upon the occurrence of any of (a), (b) or (c) above, this MOU shall terminate automatically without further notice by either Party.

### 4. Effect of this MOU

The terms set forth in this Memorandum of Understanding shall be non-binding and shall, unless otherwise earlier terminated, be subject to and superseded by the terms and conditions to be negotiated, approved and included in the Updated MSC Preferential Berthing Agreement, which document shall comply with all applicable laws, all applicable deed and land-use restrictions, all applicable zoning requirements and approvals, and all existing and applicable County bond ordinances and associated restrictions. In the event any element of the contemplated Project or Updated MSC Preferential Berthing Agreement cannot be achieved or implemented due to legal issues or impediments, the parties will attempt in good faith to explore alternative viable options. By exception, the Parties agree to be bound by the terms of their agreement to negotiate as to the Project with each other first in the manner set forth in Section 1 of this Memorandum of Understanding

## EXHIBIT C

### 5. Miscellaneous

This MOU shall be governed by the laws of the State of Florida (without giving effect to principles of conflicts of laws which would have the effect of causing another territory's or state's law to be applicable). This MOU may be executed in multiple counterparts all of which taken together shall constitute one executed original. Signatures to this MOU may be delivered via facsimile transmission or via emailed pdf file. Signatures delivered via either such method shall be treated as original signatures.

[Signature page to follow]

**IN WITNESS WHEREOF**, the Parties have executed this MOU as of the date written below.

Signed, sealed and delivered  
in the presence of:

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

By: \_\_\_\_\_

Carlos A. Gimenez  
County Mayor

Approved as to legal form and sufficiency

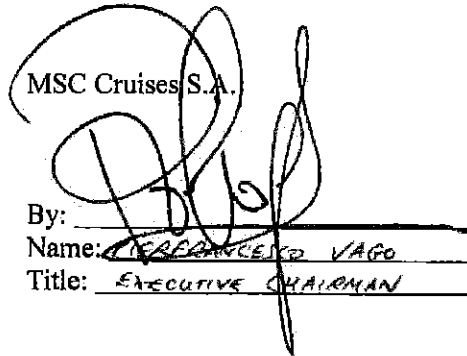
ATTEST:  
CLERK OF THE BOARD

\_\_\_\_\_  
Assistant County Attorney


By: \_\_\_\_\_

Deputy Clerk

Signed, sealed and delivered

MSC Cruises S.A.  
  
By: \_\_\_\_\_  
Name: FRANCESCO VAGO  
Title: EXECUTIVE CHAIRMAN

ATTEST:

By: 

MASSIMILIANO MIU  
CHIEF LEGAL OFFICER

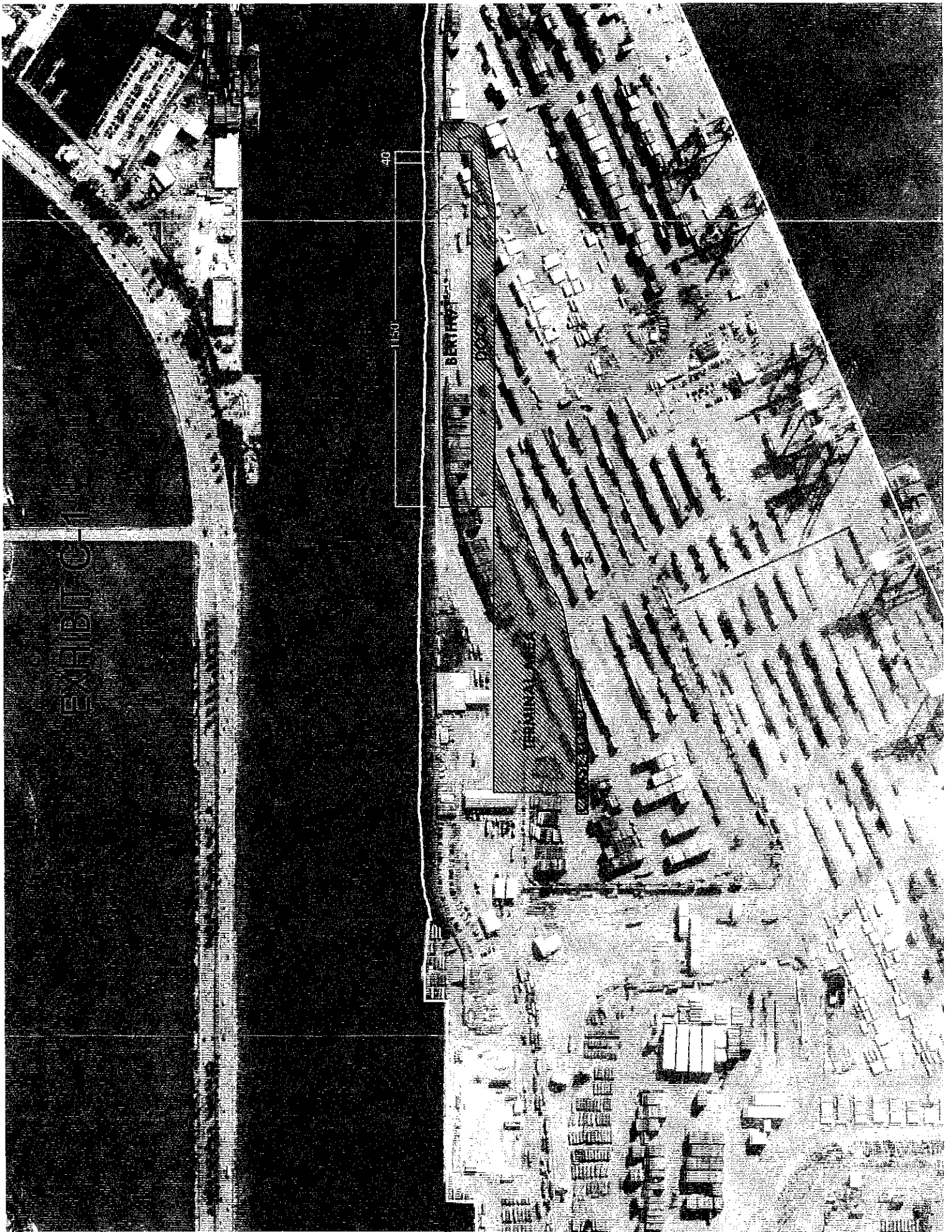


EXHIBIT C