OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

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

R-39-08

Date: January 10, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of Amendment Number 2 to the Agreement between Miami-Dade County and Oceania Cruises, Inc.

RECOMMENDATION

It is recommended that the Board approve the accompanying Resolution authorizing execution of Amendment Number 2 to the Cruise Terminal Agreement between Miami-Dade County ("County") and Oceania Cruises, Inc., ("Oceania").

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

This business is expected to generate approximately $375,000 of revenue to the Port over its three year term.

TRACK RECORD/MONITOR

Oceania Cruises, Inc. has operated from the Port of Miami since 2003. To date their account is in good standing. The Seaport Department staff member responsible for monitoring this agreement is Hydi Webb, Manager of Business Development, Port of Miami.

BACKGROUND

On October 7, 2003, the Board approved Resolution No. R-1093-03, which authorized the execution of a Cruise Terminal Agreement between the County and Oceania for a period of two (2) years, from October 1, 2003 through September 30, 2005 ("Agreement" –see attached).

Further, on September 8, 2005, the Board approved Resolution No. R-1042-05 (attached), which extended the Agreement by another two (2) years through September 30, 2007. At this time, both the Seaport and Oceania desire to amend the Agreement in order to extend its terms for an additional three (3) years.

Oceania will continue to use the Port of Miami as its winter homeport through September 30, 2010, with a minimum of one 30,277 gross registered ton ("GRT") vessel having a guest capacity of 684 passengers. Oceania's itineraries are typically longer cruises with durations of 10 to 14 days.

Under the terms of the proposed amendment, Oceania shall pay the County a total of $15.20 for passenger wharfage – the fee charged to each passenger for sailing from and to the Port of Miami. This represents $7.60 per each embarking passenger plus $7.60 per each debarking passenger.

Dockage, which represents the fee for tying-up at the pier, shall be $0.20 per GRT for the term of the Agreement as amended. These rates combined represent approximately an 18% discount from the existing tariff rates which are approved annually as part of the County budget process (current Tariff rates are $17.22 for wharfage and $.263 for dockage).

The Seaport encourages cruise lines to execute agreements with Miami-Dade County to solidify commitments and guarantee future growth in exchange for Tariff discounts. This practice has become very common among the industry's major ports. The rates detailed above provide an incentive for the smaller "luxury" lines to utilize the Port of Miami. Additionally, their presence encourages utilization of Port facilities on off-peak days as their itineraries tend to be longer and "irregular". These proposed rates are consistent with Miami's nearby competing ports.

Should the Port increase its Tariff rates for dockage and/or wharfage during the extended contract period, the Amendment provides for a corresponding increase to the rates agreed by Oceania as part of this Amendment.

It is recommended that the Board approve this proposed Amendment Number 2 to the existing Agreement. The approval of this Amendment will ensure that the business remains at the Port of Miami.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: January 10, 2008

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

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

Please note any items checked.

_____ "4-Day Rule" ("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

_____ Bid waiver requiring County Manager's written recommendation

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

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(Q)(1)(A)
1-10-08

RESOLUTION NO. **R-39-08**

RESOLUTION APPROVING AMENDMENT NUMBER 2 TO THE CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND OCEANIA CRUISES, INC.; AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXECUTE THE AMENDMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY; TO EXERCISE ANY CANCELLATION PROVISIONS CONTAINED 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 Number 2 to the Cruise Terminal Agreement between Miami-Dade County and Oceania Cruises, Inc., in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or his designee to execute Amendment Number 2 after review and approval by the County Attorney's Office; to exercise any cancellation provisions contained therein.

Y

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz** , who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman **aye**
Barbara J. Jordan, Vice-Chairwoman **aye**

Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**aye**	Dennis C. Moss	**aye**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of January, 2008. 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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. JMM

Jess M. McCarty

5

Amendment No. 2 to the Cruise Terminal Agreement Between Miami-Dade County and Oceania Cruises, Inc.

THIS AMENDMENT ("Second Amendment") is made and entered into this _____ day of _____, 2007, 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 Oceania Cruises, Inc., a Panamanian corporation, hereinafter referred to as "Oceania."

WHEREAS, on October 7, 2003 by Resolution No. R-1093-03, the Miami-Dade Board of County Commissioners (the "Board") approved a Cruise Terminal Agreement between the County and Oceania ("the Agreement"); and

WHEREAS, the Agreement provided that Oceania would commit to homeport one 30,277 gross registered ton (GRT) vessel at the Port of Miami from November 2003 to March 2004 and from November 2004 to March 2005 at the rates of $13.24 wharfage per passenger and $0.167 dockage rate per GRT; and

WHEREAS, on September 8, 2005 by Resolution No. 1042-05, the Board approved Amendment No. 1 to the Agreement which extended the Agreement an additional two (2) years; and

WHEREAS, the County and Oceania now desire to enter into this Second Amendment to the Agreement in order to extend the term of the agreement for another two (2) years and make other changes as 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. Section 3 of the Agreement is amended such that the Agreement will expire September 30, 2010.
2. Section 4 of the Agreement is amended such that the wharfage rates for passengers on an Oceania Vessel shall be $7.60 for embarkation and $7.60 for debarkation, for a total of $15.20 for the term of the Agreement as amended so long as Oceania is in compliance with the requirements of section 6 of the agreement. Should the Wharfage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase.
3. Section 5 of the Agreement is amended such that the Dockage rate that applies to Oceania Vessels shall be $.20 per GRT per call for the term of the Agreement as amended so long as Oceania is in compliance with the requirements of section 6 of the agreement. Should the Dockage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase.
4. The Agreement, as amended by the First Amendment, and this Second Amendment, 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.

5. The whereas clauses set for above are incorporated into the body of this First Amendment as if fully set forth herein.
6. This Second Amendment shall be governed by Florida Law.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment 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.

OCEANIA CRUISES, INC.

By: _____

OCEANIA CRUISES MARINE OPERATIONS

ATTEST:

By: _____

SERGIO VEGIN
DIRECTOR MAR. OPS
OCEANIA CRUISES

MIAMI-DADE COUNTY, FLORIDA

_____

ATTEST:

Clerk of the Board

_____. Approved as to form and legal sufficiency

MEMORANDUM Agenda Item No. 7(Q)(1)(A)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 7, 2003

FROM: George M. Burgess
County Manager

SUBJECT: Resolution Authorizing County Manager to Execute Agreement between Miami-Dade County and Oceania Cruises, Inc.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the accompanying resolution authorizing the County Manager to execute the attached cruise terminal agreement between Miami-Dade County and Oceania Cruises, Inc., ("Oceania").

BACKGROUND

As you are aware, the Port of Miami is homeport to the world's largest cruise lines, including Carnival Cruise Lines, Celebrity Cruises, Norwegian Cruise Line, and Royal Caribbean International. In recent years, the Port has experienced a significant growth in cruise passenger activity. Fiscal years 2000, 2001, and 2002 were record years for passengers processed. To date, cruise passenger numbers continue to show increases over last year's figures.

This increase is due, in part, to the Port's tariff incentive initiatives; its extensive capital development program, i.e., construction of new terminals and parking garages; and its continued marketing efforts. These efforts have helped the Port attract new, smaller niche-market lines such as Windjammer Barefoot Cruises and more recently, Oceania.

Oceania will commit to homeport one 30,277 GRT vessel at the Port of Miami from November 2003 to March 2004, and November 2004 to March 2005. This business is expected to generate approximately $260,000 of new revenue to the Port and solidify its position as the largest multi-day cruise port in the world, despite increasing competition from near-by ports.

Under the terms of the proposed agreement, Oceania will pay the County a total of $13.24 wharfage rate per passenger and $0.167 dockage rate per gross registered ton ("GRT"). This represents a 16.4% discount from the existing tariff rate. This agreement shall remain in effect for two (2) years and contains rate escalation provisions at the same percentage increase approved by the Board as part of the budget approval process.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners

DATE: October 7, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(Q)(1)(A)

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Manager's written recommendation**

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

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Agenda Item No. 7(Q)(1)(A)
10-7-03

Approved _____ Mayor
Veto _____
Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING COUNTY MANAGER TO EXECUTE A CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND OCEANIA CRUISES, INC.; AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Manager to execute the attached cruise terminal agreement between Miami-Dade County and Oceania Cruises, Inc., in substantially the form attached, after review and approval by the County Attorney's Office; and to exercise all rights conferred therein.

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:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of October, 2003. 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. JMM
Jess M. McCarty

CRUISE TERMINAL AGREEMENT BETWEEN OCEANIA CRUISES AND MIAMI-DADE COUNTY

THIS AGREEMENT is entered this ___ day of _____, 2003, by and between OCEANIA CRUISES, INC., a Panama corporation, registered to do business in the State of Florida (hereinafter referred to as "OCEANIA"), and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "COUNTY").

W I T N E S S E T H:

WHEREAS, the COUNTY owns and operates the Dante B. Fascell Port of Miami-Dade through the Miami-Dade County Seaport Department; and

WHEREAS, OCEANIA provides passenger cruise ship services; and

WHEREAS, OCEANIA intends to operate passenger cruise ship services out of the Port of Miami, calling on the Port with such frequency OCEANIA has applied to the COUNTY to enter into a cruise terminal agreement; and

WHEREAS, the COUNTY finds it to be in the best interest of the COUNTY to enter into a cruise terminal agreement with OCEANIA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually agree and bind themselves as follows:

Section 1. RULES OF LEGAL CONSTRUCTION.

For all purposes of the Agreement, unless otherwise expressly provided:

a) A defined term has the meaning assigned to it;

b) Words in the singular include the plural, and words in plural include the singular;

c) A pronoun in one gender includes and applies to other genders as well;

d) The terms "hereunder", "herein", "hereof", "hereto" and such similar terms shall refer to the instant Cruise Terminal Agreement in its entirety and not to individual sections or articles; and

e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the COUNTY or OCEANIA.

Section 2. DEFINITIONS

As used herein:

"Agreement" means this Cruise Terminal Agreement between the COUNTY and OCEANIA.

"Applicable Laws" means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs (including without limitation Port of Miami Terminal Tariff No. 010), policies and procedures and orders which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

"COUNTY" means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including the Miami-Dade County Seaport Department.

"Effective Date" shall have the meaning set forth in Section 3 hereof.

"Fiscal Year" means the County's fiscal year, which begins October 1 and ends September 30.

"Dockage" shall have the meaning as defined in the Tariff.

"Home Port" shall mean the Port from which a vessel embarks and disembarks passengers as the point of origin and the point of conclusion. For the purposes of this agreement,

the home ported vessel shall have a tonnage (or capacity) of no less than 30,277 gross registered tons.

"OCEANIA" means Oceania Cruises, Inc. a Panama corporation, registered to do business in the State of Florida.

"OCEANIA Vessel" means any vessel either owned, time or voyage chartered, or operated by OCEANIA.

"Passenger Cruise Ship Services" means the operation by the Operator of passenger cruise services from Miami-Dade County, Florida for passengers and accompanying baggage.

"Port" means the Miami-Dade County Seaport Department, also known as the Dante B. Fascell Port of Miami-Dade.

"Port Director" means the Director of the Port or his designee.

"Preferential Berthing Rights" means a first priority right and preference to Oceania Vessels over any other ship requesting berthing rights, but does not mean an exclusive berthing right.

"Tariff" means Port of Miami Terminal Tariff # 010, as it may be amended from time to time.

"Wharfage" shall have the meaning as defined in the Tariff.

"Year" means the Port's Fiscal Year from October 1 - September 30.

Section 3. AGREEMENT - TERM AND EFFECTIVE DATE

Subject to the terms and conditions contained herein, this contract between the COUNTY and OCEANIA shall be effective the first day immediately following the occurrence of all of the following events:

(a) Execution of this Agreement and related Miami-Dade County affidavit packet by OCEANIA;

(b) Approval of this Agreement by the Miami-Dade Board of County Commissioners; and

(c) Execution of this Agreement by the County Manager.

This Agreement shall expire September 30, 2005.

Section 4. WHARFAGE

Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the home port guarantee set forth in section 6, the wharfage rates that apply to passengers on an OCEANIA VESSEL shall be $6.62 for embarkation and $6.62 for debarkation, for a total of $13.24 for the term of this Agreement so long as OCEANIA complies with the requirements of section 6 below. Should the Wharfage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase.

Section 5. DOCKAGE

Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the home port guarantee set forth in section 6, the dockage rate that applies to OCEANIA VESSELS shall be $0.167 per gross registered ton per call for the term of this Agreement so long as OCEANIA complies with the requirements of section 6 below. Should the Dockage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase.

Section 6. BILLING, PAYMENT AND HOME PORT GUARANTEE

OCEANIA shall keep its account, as billed through a permitted Port agent, current at all times in order to maintain the benefits of this Agreement. OCEANIA shall Home Port at least seven times at the Port during the 2003-04 fiscal year and at least seven times during the 2004-05 fiscal year. Should OCEANIA fail to Home Port a vessel at least seven times at the Port during the 2003-04 fiscal year or the 2004-05 fiscal year, then, within 90 days of the end of the fiscal year, OCEANIA shall pay the Port the difference between the rates set forth in this Agreement and the Tariff rates for both dockage and wharfage for Home Port of a vessel seven times at the Port.

Section 7. PREFERENTIAL BERTHING RIGHTS

OCEANIA shall receive Preferential Berthing Rights at Terminal 12 during the time periods set forth in the 2003-04 berth schedule, which is attached to this Agreement and incorporated by reference. For the 2004-05 fiscal year, OCEANIA shall provide a berthing schedule no less than 90 days in advance of the beginning of the fiscal year and comply with all other requirements of this Agreement in order to secure the preferential berthing rights set forth in this section. The County shall have the right to allow other vessels to use the berth at any other time.

Section 8. EXCLUSIVE USE OF TERMINAL 12; NON-EXCLUSIVE USE OF ADJACENT PARKING GARAGE

OCEANIA shall have the exclusive rights to use Terminal 12 during the properly-scheduled embarkation and debarkation of passengers from an OCEANIA vessel berthed at Terminal 12. The COUNTY shall make the parking garage adjacent to Terminal 12 available to OCEANIA passengers for parking at published Tariff rates on a non-exclusive basis.

Section 9. TERMINATION

OCEANIA or the COUNTY may terminate this agreement upon 60 days notice in either party's sole discretion, without penalty, with or without cause, provided however that OCEANIA shall reimburse the COUNTY pursuant to the provisions of paragraph 6 above should OCEANIA fail to . Upon termination of the Agreement, OCEANIA shall pay applicable Tariff rates.

Section 10. NOTICES

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the COUNTY:	Seaport Director Miami-Dade Seaport Department 1015 North American Way, Suite 200 Miami, Florida 33132
With a copy to:	County Attorney Miami-Dade County Stephen P. Clark Center 111 N.W. 1st Street, 28th Floor Miami, Florida 33128
To OCEANIA:	Capt. A. Mangachi Sr. V.P. Marine Operations Oceania Cruises, Inc. 8120 N.W. 53rd Street, Suite 100 Miami, Florida 33166

With a copy to: Blass & Frankel
Suite 2130
1 S.E. 3rd Avenue
Miami, Florida 33131

Section 11. AGREEMENT NOT A LEASE

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or improvements is created by this Agreement.

Section 12. COMMITMENT ON INDEMNITY AND INSURANCE

(a) Indemnification by OCEANIA. OCEANIA agrees to indemnify, protect and hold harmless the COUNTY, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which the COUNTY, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the negligent acts or intentional misconduct of OCEANIA or its agents, employees, officers or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the COUNTY or its employees, agents or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the COUNTY, its agents or employees may become liable. Upon request of the COUNTY, OCEANIA shall undertake to defend, at its sole cost and expense, any and all suits brought against the COUNTY in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence by OCEANIA or its agents, employees, officers or contractors.

(b) Indemnification by COUNTY. Subject to the provisions of, and limitations set forth in, Section 768.28, Florida Statutes, the COUNTY agrees to indemnify, protect and hold

harmless OCEANIA, and its subsidiaries, divisions, affiliates, officers, directors, agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which OCEANIA or its subsidiaries, divisions, affiliates, officers, directors, agents or employees may be subjected which are caused by or arise out of, in whole or in part, any negligent acts or intentional misconduct by the COUNTY, its employees, agents or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of or intentional misconduct of OCEANIA or its employees, agents, or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom OCEANIA or its agents or employees may become liable. Upon request of OCEANIA, the COUNTY shall undertake to defend, at its sole cost and expense, any and all suits brought against OCEANIA, its subsidiaries, divisions, affiliates, officers, directors, agents, employees and contractors in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence or intentional misconduct by, the COUNTY, its agents, employees or contractors. For purposes of this Section, neither OCEANIA nor its subsidiaries, divisions, affiliates, officers, directors, agents, employees and contractors shall be deemed agents, contractors, employees or affiliates of the COUNTY.

(c) Environmental. OCEANIA shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Port.

(d) Insurance Coverage Required. OCEANIA shall carry all insurance as required by the Tariff.

Section 13. EXCLUSIVE VENUE AND CHOICE OF LAW

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission.

Section 14. NO ORAL CHANGE OR TERMINATION

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 15. COMPLIANCE WITH APPLICABLE LAWS

Throughout the Term of this Agreement, OCEANIA shall comply with all Applicable Laws. In the event OCEANIA decides to act as its own agent, OCEANIA shall additionally comply with all Applicable Laws (including the Tariff) related to agents and shall apply for and receive a permit to act as agent and meet all requirements for receiving a permit to act as an agent including but not limited to providing the required payment guarantee.

Section 16. NUISANCE

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

Section 17. REPRESENTATIONS

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

Section 18. NO EXCLUSIVE REMEDIES

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 19. FAILURE TO EXERCISE RIGHTS NOT A WAIVER

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

Section 20. EVENTS OF DEFAULT

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

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

(ii) OCEANIA fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from

the COUNTY specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, OCEANIA shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

(iii) If OCEANIA shall be adjudicated bankrupt, or if OCEANIA shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of OCEANIA are commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of OCEANIA which is not dismissed within 60 days of such appointment.

(b) The COUNTY shall be in default under this Agreement if the COUNTY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from OCEANIA specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not interfere with the operations of OCEANIA at the Port, the COUNTY shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.

Section 21. REMEDIES UPON DEFAULT

Upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may terminate this Agreement and pursue all remedies available at law or in equity.

Section 22. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement

or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 23. ASSIGNMENT

The term of this Agreement shall inure to the exclusive benefit of OCEANIA and is binding upon OCEANIA. OCEANIA may not assign or transfer this Agreement, or any rights hereunder, without the prior written consent of the COUNTY.

Section 24. OBLIGATIONS SURVIVING TERMINATION HEREOF

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 25. LACK OF AGENCY RELATIONSHIP

Nothing contained herein shall be construed as establishing an agency relationship between the COUNTY and OCEANIA and neither OCEANIA nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the COUNTY for any purpose hereunder, and the COUNTY, its

contractors, agents, and employees shall not be deemed contractors, agents, or employees of OCEANIA or its subsidiaries, divisions or affiliates.

IN WITNESS WHEREOF, the COUNTY and OCEANIA have caused this Agreement to be duly executed.

OCEANIA CRUISES, INC.
a Panama corporation

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Name: _____

By: _____

Title: _____

Date: _____

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

By: _____
County Manager

Date: _____

ATTEST:

CLERK OF THE BOARD

By: _____
Deputy Clerk

Date: _____

Memorandum

MIAMI-DADE COUNTY

Date: September 8, 2005

To: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

From: George M. Burgess, County Manager

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

Subject: Resolution Authorizing Execution of Amendment Number One to the Agreement between Miami-Dade County and Oceania Cruises, Inc.

RECOMMENDATION

It is recommended that the Board approve the accompanying Resolution authorizing execution of Amendment Number One to the Cruise Terminal Agreement between Miami-Dade County ("County") and Oceania Cruises, Inc., ("Oceania").

BACKGROUND

On October 7, 2003, the Board approved Resolution R-1093-03, which authorized the execution of a Cruise Terminal Agreement between the County and Oceania for a period of two (2) years, from October 1, 2003 through September 30, 2005 ("Agreement"). At this time, both the Seaport and Oceania desire to amend the Agreement in order to extend the terms of the Agreement for an additional two (2) years.

Oceania will continue to use the Port of Miami as its winter homeport from November 2005 through March 2006 and from November 2006 through March 2007 with a minimum of one 30,277 gross registered ton ("GRT") vessel having a guest capacity of 684 passengers. Oceania's itineraries are typically longer cruises with durations of 10-, 12- and 14- days.

Under the terms of the proposed amendment, Oceania shall pay the County a total of $13.68 for passenger Wharfage – the fee charged to each passenger for sailing from and to the Port of Miami. This represents $6.84 per each embarking passenger plus $6.84 per each debarking passenger. Dockage, which represents the fee for tying-up at the pier, shall be $0.175 per gross registered ton for the term of the Agreement as amended. This represents an 18% discount from the existing tariff rates which are approved annually as part of the County budget process (current Tariff rates are $15.50 for wharfage and $.23 for dockage).

The Seaport encourages cruise lines to execute agreements with Miami-Dade County to solidify long-term commitments and guarantee future growth in exchange for Tariff discounts. This practice has become very common among the industry's major ports. The rates detailed above provide an incentive for the smaller "luxury" lines to utilize the Port of Miami. Additionally, their presence encourages utilization of Port facilities on off-peak days as their itineraries tend to be longer and "irregular". These proposed rates are consistent with Miami's nearby competing ports and are commensurate to discounts given to other cruise lines at the

Port of Miami based on the lines' existing passenger volume commitments and the length of their Board approved agreements.

Should the Port increase its Tariff rates for dockage and/or wharfage during the extended contract period, the Amendment provides for a corresponding increase to the rates agreed by Oceania as part of this Amendment.

Towards this end, we respectfully request that the Board approve the proposed Amendment Number One to the Agreement. Furthermore, approval of this Amendment will ensure that the business remains at the Port of Miami for two more years rather than move to competing ports offering similar discounts. This business is expected to generate over $200,000 of additional revenue to the Port and solidify its position as the largest multi-day cruise port in the world.

8/1/05

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: September 8, 2005

FROM: Murray A. Greenberg
County Attorney

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

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Manager's written recommendation**

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

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

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

09-08-05

Approved _____ Mayor

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE AMENDMENT NUMBER ONE TO THE CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND OCEANIA CRUISES, INC.; AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Manager to execute Amendment Number One to the Cruise Terminal Agreement between Miami-Dade County and Oceania Cruises, Inc., in substantially the form attached, after review and approval by the County Attorney's Office; and to exercise all rights conferred therein.

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:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of September, 2005. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

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. JMM

Jess M. McCarty

Amendment No. 1 to the Cruise Terminal Agreement
Between Miami-Dade County and Oceania Cruises, Inc.

THIS AMENDMENT ("First Amendment") is made and entered into this _____ day of _____, 2005, 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 Oceania Cruises, Inc., a Panamanian corporation, hereinafter referred to as "Oceania."

WHEREAS, on October 7, 2003 by Resolution No. R-1093-03, the Miami-Dade Board of County Commissioners (the "Board") approved a Cruise Terminal Agreement between the County and Oceania ("the Agreement"); and

WHEREAS, the Agreement provided that Oceania would commit to homeport one 30,277 gross registered ton (GRT) vessel at the Port of Miami from November 2003 to March 2004 and from November 2004 to March 2005 at the rates of $13.24 wharfage per passenger and $0.167 dockage rate per GRT; and

WHEREAS, the County and Oceania now desire to enter into this First Amendment to the Agreement in order to extend the term of the agreement for two years and make other changes as 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. Section 3 of the Agreement is amended such that the Agreement will expire September 30, 2007.
2. Section 4 of the Agreement is amended such that the wharfage rates for passengers on an Oceania Vessel shall be $6.84 for embarkation and $6.84 for debarkation, for a total of $13.68 for the term of the Agreement as amended so long as Oceania is in compliance with the requirements of section 6 of the agreement. Should the Wharfage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase.
3. Section 5 of the Agreement is amended such that the Dockage rate that applies to Oceania Vessels shall be $0.175 per GRT per call for the term of the Agreement as amended so long as Oceania is in compliance with the requirements of section 6 of the Agreement. Should the Dockage rate contained in the Tariff increase from the rates in effect at the effective date of this Agreement, then the rates contained in this section shall increase by the same percentage rate as the Tariff rate increase.
4. The Agreement, as amended by this First Amendment, 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.
5. The whereas clauses set for above are incorporated into the body of this First Amendment as if fully set forth herein.
6. This First Amendment shall be governed by Florida Law.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment 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.

OCEANIA CRUISES, INC.

By: _____
Sr. V.P. Vessel Operations

ATTEST:

By: _____

MIAMI-DADE COUNTY, FLORIDA

_____
County Manager

ATTEST:

_____
Clerk of the Board

_____. Approved as to form and legal sufficiency