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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM Agenda Item No. 8(K)(3)

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

DATE: January 24, 2012

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

SUBJECT: Resolution authorizing Preferential Berthing Agreement between Miami-Dade County and MSC Crociere S.A.

Resolution No. R-38-12

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.

For R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: January 10, 2012

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing Execution of Preferential Berthing Agreement between Miami-Dade County and MSC Crociere S.A.

This substitute differs from the original in that it includes an executed agreement from MSC Crociere S.A. It also corrects a scrivener error in the Fiscal Impact/Funding Source section of this memorandum to indicate that the minimum revenue expected to be generated by the agreement will be $3.5 million and not $5.7 million.

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a Preferential Berthing Agreement ("Agreement") between Miami-Dade County ("County") and MSC Crociere ("MSC").

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

This Agreement provides MSC with preferential berthing rights while providing the Port a minimum annual guarantee of no less than 80,000 Passenger Movements per fiscal year throughout the Agreement's three (3) year term. The Agreement is expected to generate a minimum of 240,000 passengers to over 545,000 passengers and a minimum of $3.5 million to over $9 million of revenue to the Port over its initial three (3) year term.

TRACK RECORD/MONITOR

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

BACKGROUND

MSC Crocierce ("MSC") is an Italian cruise line owned by Mediterranean Shipping Company S.A., a privately owned shipping group based in Geneva, Switzerland. Mediterranean Shipping Company, a global shipping line, is the second largest container shipping line. The company operates cargo and cruise vessels around the world including South Florida. MSC is registered to do business in the State of Florida through its North American sales and marketing agent, MSC Cruises (USA), Inc.

MSC Cruises was founded in 1990 and is currently the fourth largest cruise operator in the world. It carries 1.2 million passengers per year worldwide with a fleet of eleven existing vessels plus one new build scheduled for delivery in spring 2012. MSC's leading market is the Mediterranean. However, it operates seasonal itineraries throughout the world including the Caribbean. MSC's North American headquarters is located in Fort Lauderdale and its cruise ships currently sail Caribbean Itineraries from Port Everglades.

MSC passengers are mostly European with a growing number of North Americans sailing Caribbean itineraries.

Under the terms of this proposed Agreement, MSC will move its cruise ship operations from Port Everglades to the Port of Miami beginning Fiscal Year 2013/14. MSC commits to home porting MSC vessels at the Port Miami with a minimum eighty-thousand (80,000) passenger moves through the Port each fiscal year. Additionally, MSC commits Miami as the exclusive homeport for MSC vessels in South Florida (Palm Beach, Broward, Monroe, Brevard, and Miami-Dade counties). MSC shall not homeport any MSC vessel in another South Florida port throughout the term of this Agreement, unless Miami is unable to provide MSC with a suitable terminal within a required timeframe.

In return, the County shall grant MSC preferential berthing rights at Terminal F on Saturdays during the winter season months (October 15 through April 30). Should MSC not use Terminal F on a Saturday during the winter season, the County shall have the right to allow other cruise lines use of the facility. Additionally, should MSC have multiple cruise vessels on a Saturday, then MSC shall have the right to use another cruise terminal provided that such use will not interfere with preferential berthing rights of another cruise line at the Port.

MSC shall pay passenger wharfage and dockage rates set forth in the Tariff during Fiscal Year 2011/12 plus any annual increase to the Tariff for passenger wharfage and dockage rates that may occur for the Fiscal Year commencing October 1, 2012, which shall be capped at three percent (3%) per year. Thus, the passenger wharfage rate chargeable by the County to MSC in Fiscal Year 2013/14 (when MSC begins homeporting in Miami) shall be no more than $10.70 per each passenger embarkation and $10.70 per each passenger debarkation. The dockage rate chargeable by the County to MSC in Fiscal Year 2013/14 shall be no more than $.33 per gross registered ton.

Aside from dockage and wharfage rates, all other applicable Port fees due to the County from MSC vessels shall be billed as per the Tariff.

Should MSC fail to meet its annual guarantee of eighty thousand (80,000) passengers in any given year, MSC will 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 rate for the given fiscal year multiplied by the number of passenger moves below the minimum annual guarantee of 80,000 passengers annually.

In exchange for MSC's annual guarantee, the County shall pay MSC a parking incentive. The parking incentive shall be based on the proportion of MSC multi-day embarkations to the Port's total multi-day cruise embarkations. For example, if MSC's multi-day embarkations are ten percent (10%) of the Port's total mulit-day cruise embarkations then MSC shall receive ten percent (10%) of passenger multi-day parking revenues. The Port shall remit parking revenues to MSC within sixty (60) days of the close of each fiscal quarter, the first fiscal quarter close being December 31, 2013. This parking incentive is consistent with other cruise agreements previously approved by the Board.

The term of this Agreement shall be for a period of three (3) years. MSC shall have the option to request an extension of this Agreement for up to two (2) additional terms of one (1) year each upon MSC providing written notice to the County within one (1) month prior to the termination of the then-existing term. Should this option be exercised, MSC and the County shall negotiate mutually-agreeable terms of the extension and such extension would be brought back to the Board for its consideration.

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

DELEGATED AUTHORITY

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

Deputy Mayor

MEMORANDUM

(Revised)

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

DATE: January 24, 2012

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

SUBJECT: Agenda Item No. 8(K)(3)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(K)(3)
1-24-12

RESOLUTION NO. R-38-12

RESOLUTION AUTHORIZING PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MSC CROCIERE S.A.; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS THEREIN

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

~~**WHEREAS**, MSC Crociere S.A. is a Swiss corporation with headquarters in Switzerland; and~~

~~**WHEREAS**, the Mayor finds it is in the best interest of the County to recommend the waiver of the provisions of Resolution No. 130-06 as the agreement is fully negotiated and in final form, and the County is anticipating arrival of the executed agreement prior to final Board action~~]],[1]

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

Section 1. Approves the Preferential Berthing Agreement between Miami-Dade County and MSC Crociere S.A., in substantially the form attached hereto and made a part hereof; and

Section 2. Authorizes the Mayor or the Mayor's Designee to execute this Agreement after review and approval by the County Attorney's Office and to exercise any cancellation and renewal provisions therein.

[1] The differences between the substitute and the original item are indicated as follows: words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< constitute the amendment proposed.

The foregoing resolution was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Jean Monestime** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			**aye**
Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**aye**
Xavier L. Suarez	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of January, 2012. 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: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard Seavey

PREFERENTIAL BERTHING AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND MSC CROCIERE S.A.

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between MSC Crociere S.A., a Swiss corporation (hereinafter "MSC"), and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter "the County"). MSC and the County are hereinafter collectively referred to as "the Parties."

WITNESSETH:

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

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

WHEREAS, MSC is in the cruise business and manages and operates MSC Vessels, including vessels needing a South Florida Home Port; and

WHEREAS, MSC vessels intend to call on the Port with such frequency that MSC has requested the County to enter into a volume incentive agreement; and

WHEREAS, in consideration of MSC's commitment to home port a MSC Vessel(s) at the Port as set forth in detail below, and other good and valuable consideration, the County finds it to be in its best interest to enter into a volume incentive agreement with MSC on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants, term and conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the Parties hereto do and hereby mutually agree and bind themselves as follows:

1. RULES OF CONTRACT INTERPRETATION

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

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

(b) An accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;

(c) Words in the singular include the plural, and words in the plural include the singular;

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

(e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the County or MSC;

(f) All exhibits and appendices attached hereto shall be deemed incorporated here; and,

(g) All recitals set forth above shall be deemed incorporated herein.

2. DEFINITIONS

(a) **"Affiliate"** An "affiliate" of, or a person "affiliated" with, a specified person is a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) **"Agreement"** means this Volume Incentive Agreement between the County and MSC.

(c) **"Applicable Laws"** means those applicable federal, state and local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, orders and Seaport Department policies and procedures which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

(d) **"Berth"** shall mean that portion of the Terminal(s) utilized for the berthing of MSC Vessels.

(e) **"County"** means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including, without limitation, the Miami-Dade County Seaport Department.

(f) **"DERM"** means the Miami-Dade County Department of Environmental Resources Management.

(g) **"Dockage"** means the charge assessed for dockage under Port of Miami Terminal Tariff No. 010 per 24-hour period.

(h) **"Effective Date"** shall have the meaning set forth in Section 4 hereof.

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

(j) **"Force Majeure"** has the meaning set forth in Section 22.

(k) **"Home Port"** means the Port from which a vessel embarks and disembarks passengers as the point of origination and conclusion.

(l) **"Minimum Annual Guarantee"** shall have the meaning set forth in Section 3(c) hereof.

(m) **"Modified Tariff Dockage and Wharfage Rates"** shall mean the dockage and wharfage rates set forth in Section 3(b) hereof.

(n) **"MSC"** means MSC Crociere S.A., a Swiss corporation, doing business in the State of Florida through its General Sales Agent MSC Cruises (USA), Inc., a Delaware Corporation registered to do business in the State of Florida, and any affiliate of either company operating cruise vessels calling at ports in South Florida as defined in Section 3(d) below.

(o) **"MSC Deployment Schedule"** shall mean the proposed annual MSC vessel deployment schedule that MSC shall submit to the Port each Fiscal Year during the Term, which MSC must submit at least twelve months in advance of the earliest vessel call listed therein.

(p) **"MSC Vessel"** means any vessel either owned, time or voyage chartered, or operated by MSC or its affiliates.

(q) **Parking Revenues"** means total vehicle parking revenue collected by the Port from overnight multi-day cruise passengers.

(r) **"Passenger Movements"** means a cruise ship passenger either embarking or disembarking from a cruise ship.

(s) **"Preferential Berthing Right(s)"** means commencing with the fiscal year 2013/14 Winter Season, a first priority right and preference to MSC Vessels over any other ship requesting berthing rights at Terminal F on Saturdays during the Winter Season as set forth and limited in Section 3, but does not mean an exclusive berthing right.

(t) **"Port"** means the Dante B. Fascell Port of Miami-Dade County.

(u) **"Port Director"** means the Director of the Miami-Dade County Seaport Department.

(v) **"Shortfall Payment"** means a payment due from MSC to the County in any one Fiscal Year in an amount representing the shortfall, if any, between MSC's total vessel charge payments to the County for vessel charges arising in such Fiscal Year and the Minimum Annual Guarantee.

(w) **"Tariff"** or **"Port Tariff"** means the Port of Miami-Dade Terminal Tariff No. 010, Rates, Rules, and Regulations for the Seaport Facilities of Miami-Dade County, Florida, in effect on the effective date of this Agreement, which includes tariffs for dockage, wharfage, harbor, water fee, and rental, among others. The parties acknowledge and agree that the County may unilaterally revise or amend the terms and rates contained in the Tariff from time to time and at the County's sole discretion.

(x) **"Term"** means the period commencing with the Effective Date (as defined in Section 4 hereof) and expiring on the Expiration Date (as defined in Section 4 hereof).

(y) **"Terminal(s)"** means any and all land, facilities, buildings, gangways and improvements at the Port, excluding associated parking garages, described in Section 3.

(z) **"Wharfage"** means the charge assessed for passenger wharfage under Port of Miami Terminal Tariff No. 010 per each embarkation and per each debarkation.

(aa) **"Winter Season"** means the period from October 15 through April 30.

3. MSC AND PORT OF MIAMI PLEDGES

(a) Terminal Use.

(i) The County hereby grants to MSC Preferential Berthing Rights to utilize Terminal F for MSC vessels of any class on Saturdays during the Winter Season during the Term provided such Saturdays are included in a MSC Deployment Schedule submitted to the County at least twelve months in advance of an MSC Vessel's scheduled berth thereunder (hereafter, "MSC Preferential Berthing Rights"). During the Term, MSC shall provide the MSC Deployment Schedule to the Port Director or his designee no later than twelve months prior to the earliest date a MSC Vessel is scheduled to call at the Port. MSC shall notify the County, in writing, of any changes to the MSC Deployment Schedule not less than twelve (12) months prior to the earliest date affected by the change to such schedule. In addition, MSC shall update the MSC Deployment Schedule on an annual basis at least twelve months prior to the effective date of such schedule. The Parties

acknowledge that it is in the best interests of the cruise lines and the Port to work together cooperatively concerning scheduling to maximize the use of the Port's cruise terminal(s).

(ii) The County covenants and agrees that MSC shall have the MSC Preferential Berthing Rights (defined above) to utilize Terminal F for the berthing of MSC Vessels for embarkation and disembarkation of passengers. If MSC has multiple MSC Vessels on a Saturday that Terminal F cannot accommodate or if MSC has a Vessel on a day other than Saturday, then the MSC shall have the right to use another terminal at which another cruise line has preferential berthing rights, provided that such use will not interfere with the preferential berthing rights of any other cruise line Agreements and further provided that such other terminal is otherwise available.

(iii) Notwithstanding and prevailing over any contrary terms or implications set forth herein, the County shall have the right to allow other vessels or lines to use any portion of Terminal F or adjacent Berths, or any other Terminals or Berths, at any time during which MSC has not been granted MSC Preferential Berthing Rights pursuant to Section 3(a)(i). The assignment of particular Port Terminals and Berths to cruise lines shall be at the sole discretion of the Port Director.

Should the Vessels be late on the route due to weather or any other similar cause, MSC shall inform The County as soon as reasonably possible. In such case The County shall use reasonable efforts to provide a berth and facilities infrastructure subject to availability at the discretion of the Port.

(iv) MSC has previously inspected Terminal F on December 8, 2011 and deems it suitable for MSC's purposes and intended cruise operations at the Port.

(b) Port Fees.

(i) Wharfage: Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the homeport guarantee set forth in section (c), the passenger wharfage fees due from MSC to the County shall be based on the rates set forth in the Tariff during Fiscal Year 2011/12 plus any annual increases to the Tariff passenger wharfage rate that may occur in the Fiscal Year commencing October 1, 2012, which shall be capped at 3% per year for MSC regardless of the actual Tariff increases. Thus, the

passenger wharfage rate chargeable to MSC effective Fiscal Year 2013/14 shall be no more than $10.70 per each passenger embarkation and each passenger debarkation.

The County may increase the wharfage rate that applies to MSC passengers in an amount equal to any percentage increase otherwise charged to cruise lines in general; provided, however, no such increase shall be in excess of three percent (3%) per annum of the then existing rate chargeable to MSC and such rate shall not be increased more than one time in a twelve month period. Such rate increases shall apply regardless of, and prevail over, any increase in passenger wharfage increases applied to the Tariff as defined in Section 2(w) of this Agreement.

(ii) Dockage: Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the homeport guarantee set forth in section (c), the dockage fees due from MSC to the County shall be based on the rates set forth in the Tariff during Fiscal Year 2011/12 plus any annual increases to the Tariff dockage rate that may occur in the Fiscal Year commencing October 1, 2012, which shall be capped at 3% per year for MSC regardless of the actual Tariff increases. Thus, the dockage rate chargeable to MSC effective Fiscal Year 2013/14 shall no more than $ .33 per gross registered ton.

The County may increase the dockage rate that applies to MSC passengers in an amount equal to any percentage increase otherwise charged to cruise lines in general; provided, however, no such increase shall be in excess of three percent (3%) per annum of the then existing rate chargeable to MSC and such rate shall not be increased more than one time in a twelve month period. Such rate increase shall apply regardless of, and prevail over, any dockage increase applied to the Tariff as defined in Section 2(w) of this Agreement.

(iii) Harbor Fee / other Tariff terms: Harbor Fees due from MSC Vessels to the County (per vessel call) shall be those set forth in the Tariff. Other than the dockage and wharfage rate, all other applicable Port Fees due to the County from MSC Vessels shall be as per the Tariff.

(c) MSC Minimum Annual Guarantee and Home Port Commitment. Commencing Fiscal Year 2013/14 and continuing each Fiscal Year during the Term, MSC shall have a Minimal Annual Guarantee of no less than 80,000 Passenger Movements through the Port each Fiscal Year. If MSC

fails to meet this annual guarantee, it shall make a Shortfall Payment to the County within thirty (30) days of the end of the Fiscal Year in which the guarantee was not met. Shortfall payments will be based on the then applicable wharfage rates for the given Fiscal Year times the number of passenger moves below the Minimum Annual Guarantee of 80,000 passengers annually.

(d) Exclusive Homeport. MSC agrees that the Port shall be the exclusive Home Port in South Florida (including Palm Beach, Broward, Monroe, Brevard, and Miami-Dade Counties) for all MSC vessels and MSC agrees not to Home Port any MSC vessels in another South Florida port commencing from October 1, 2013 through and including October 1, 2016, and also during any renewal term that may be mutually agreed upon and approved pursuant to the requirements hereof; provided, however, MSC shall have the right to seek a written waiver of the requirements of this provision if a scheduled MSC Vessel call and related berthing request cannot be accommodated with a suitable Port terminal, in which case such written waiver request may not be unreasonably denied or delayed. In such instance, and upon the granting of such waiver request, MSC, at its sole option, may commit the subject vessel call to another port until such time as the Port can accommodate the MSC Vessel in question. MSC shall not be deemed to be in breach of this Exclusive Homeport provision should it temporarily deploy a vessel to another South Florida port pursuant to the limited waiver provision set forth above. Such temporary deployment shall not exceed one (1) year.

(e) Parking Revenues

(i) In consideration of the Passenger Movements that will be generated by MSC, its subsidiaries, divisions and its affiliates during the Term of the Agreement, and the Parking Revenue that will be collected by the County for paying passenger vehicles that park at the Port during the Term of this Agreement, the County shall pay to MSC a parking incentive based upon a fraction of the Parking Revenue collected by the County for those paying vehicles that park at the Port during the Term of this Agreement deemed to carry MSC multi-day cruise passengers (the "Parking Incentive").

(ii) For purposes of this Agreement, MSC's Parking Incentive shall be determined based on the proportion of MSC multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port in a given Fiscal Year. Embarkations associated with port-of-call vessels shall not be included in the calculation of the Parking Incentive, nor shall cruise passenger embarkations associated with daily cruises, non-revenue cruises, or cruises to

nowhere be included in such calculation. As an example, if in a given Fiscal Year during the Term, MSC's (multi-day cruise passenger or cruises on vessels subject to any other Port related volume incentive and/or Preferential Berthing Agreement) embarkations are ten percent (10%) of the Port's total multi-day cruise passenger embarkations then MSC will receive ten percent (10%) of Parking Revenues collected by the Port in such Fiscal Year. The Port shall remit Parking Revenues to MSC within sixty (60) days of the close of each fiscal quarter, the first fiscal quarter close being December 31, 2013.

MSC reserves the right to check said reconciliation for accuracy. As the Parking Incentive is to be based on an annual proportion of Parking Revenues, but paid quarterly (within sixty (60) days of the close of each fiscal quarter during the Term in which MSC Vessels are calling the Port), such quarterly payments shall be subject to an end-of-the-Fiscal Year reconciliation conducted by the County. The operational mode and timings of its verifications will subject to the Parties mutual agreement.

4. TERM AND EFFECTIVE DATE

This Agreement shall be effective upon the last to occur of (i) its execution by a duly authorized representative of MSC and (ii) its execution by the County Mayor or his designee after the effective date of a resolution approved by the Board of County Commissioners of Miami-Dade County ("Board") approving this Agreement and authorizing its execution ("Effective Date"), and shall expire at 12:01 am on October 1, 2016 (the "Expiration Date"). MSC shall have the option to request an extension of this agreement for up to two (2) additional terms of one (1) year each upon MSC providing notice to the County within one (1) month prior to the termination or expiration of the then-existing term, but the terms of such potential extension(s) shall be subject to the future negotiation and approval by the parties hereto, and, in the case of the County, shall be subject to the approval of the Board via duly enacted resolution. Absent the execution of such an amendment, neither party shall be obligated to continue under the terms of this agreement beyond its stated Term or (if applicable) properly approved and authorized extended term.

5. PERMITTED USE OF TERMINAL

(a) No Unlawful or Unauthorized Use. MSC shall not use the Terminal(s) for any unlawful purpose, any use other than a cruise passenger terminal, or any use prohibited by Applicable Laws.

(b) No Abandonment or Cessation of Service, Exceptions. During the Term, including any renewal term, MSC agrees not to abandon or cease service

to the Terminal(s), unless expressly specified and authorized under this Agreement.

(c) Port and Vessel Registration Requirements. Prior to operating any MSC Vessel from the Terminal(s), MSC must first register such vessel with the Port and deliver copies of all required vessel certifications, approvals, and operating permits to the Port.

(d) Terminal Advertising and Promotions. The County shall have the right to advertise and/or promote in the interior and exterior of the Terminal(s) in the County's sole discretion, as long as such Advertising do not interfere with MSC's operations within Terminal F.

6. SECURITY, MAINTENANCE AND REPAIR OF THE TERMINAL(S)

(a) Terminal Maintenance & Security Responsibility.

(i) MSC shall have no responsibility or obligation to maintain the Terminal(s), except as provided in this Section 6(a). When using the Terminal(s), MSC shall at all times, at its own cost and expense, keep the Terminal(s) in a clean, orderly, secure, and safe condition, normal wear and tear excepted, and be responsible for security of the apron, wharf and interior portions of the Terminal(s) when using the Terminal(s).

(ii) The County shall:

a. Provide electricity, water and sewer service to the Terminal(s).

b. Maintain, repair and replace, as needed, the electrical, heating, ventilating, air-conditioning, elevators, escalators, mechanical, plumbing, safety systems, wiring systems, carpets, fixtures, furniture, lighting and structural components of the buildings and improvements comprising the Terminal(s) and paint the exterior and interior of the Terminal(s), as necessary, and keep same in good working order and operating condition to accommodate MSC's then current fleet throughout the Term.

c. Except when MSC is using the Terminal(s), provide all necessary janitorial services in accordance with the County's current practice.

d. Make repairs at its own cost and expense to all paved surfaces, all utilities and lighting at the Terminal(s) and the surrounding areas.

(iii) MSC shall not make any changes or alterations to the Terminal(s) without the prior written permission of the Port Director.

(b) MSC solely shall be responsible for complying with all federal, state and local security requirements related to MSC's operations at the Port. MSC agrees to indemnify and hold harmless the County for any security or security-related notice of violation or other fine or penalty of any kind or in any form whatsoever that is based on action or inaction by MSC or its affiliates, employees, contractors, subcontractors or passengers.

(c) County Rights to Enter Terminal Space. The County, its agents and representatives and federal, state and local law enforcement officers may at all times and without advanced notice, enter the Terminal(s) to view, inspect, and/or show the Terminal(s), or for any other purpose.

(d) Casualty.

(i) In the event that any of the Terminal(s) or any portion thereof, is damaged or destroyed by fire or other casualty, or the Port is inaccessible to MSC MSC Vessels or passengers (including without limitation, due to damage or destruction to the Port bridge or waterway), the County shall promptly notify MSC of such an event and repair or remedy the damage or situation to the condition that existed immediately prior to such casualty or provide reasonably suitable temporary alternative accommodations, at the Port's option.

(ii) In the event of any such casualty that only affects the Terminal(s), the County shall make reasonable efforts to provide alternative berthing and terminal facilities at the Port to enable MSC to continue its operations until the affected Terminal(s) is/are restored.

(iii) In the event of a casualty, the provisions of this Agreement temporarily shall be suspended and the term of this Agreement shall be extended accordingly until reasonably suitable temporary accommodations are available on the Port.

7. SIGNAGE AT TERMINAL(S)

(a) The County requires the use of international symbols for all safety and visitor signs (such as elevators, check-in, and safety instructions) and the

County agrees to maintain such international signage at the Terminal(s) at all times, at its sole cost and expense.

(b) MSC shall at all times be permitted to maintain temporary and removable signage inside of a particular Terminal for MSC and the MSC MSC Vessels when MSC is using a particular Terminal provided same complies with the Miami-Dade County Sign Ordinance requirements or its successor as such may be amended from time to time, and all Applicable Laws, has been approved in advance by the Port Director, and is removed by MSC. MSC shall be solely responsible for all costs associated with the design, construction, installation and removal of such signage at the direction of the Seaport.

(c) MSC acknowledges that the County has entered or may enter into agreements for commercial signs and advertising both within and outside Port terminal(s) and elsewhere on the Port. MSC agrees that this Agreement shall not preclude or in any way affect such commercial sign and advertising agreements, or the County's rights or ability to enter into such agreements in the future.

8. VOLUME INCENTIVE AGREEMENT NOT A LEASE

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or the improvements located in or at the Terminal(s) is created by this Agreement.

9. COMMITMENT ON INDEMNITY AND INSURANCE

(a) Indemnification by MSC. MSC 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 reckless or negligent acts or omissions or intentional misconduct of MSC or its agents, employees, officers or contractors which arise from, grow out of, or are connected in any way with either the occupation and use of the Terminal(s) by MSC or its agents, employees, officers, contractors, subcontractors, invitees or guests under this Agreement or any breach of this Agreement by MSC; 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, officers, agents, contractors, subcontractors, invitees or guests. 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, MSC 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.

(b) Indemnification by County. The County agrees to indemnify and hold harmless MSC, to the extent and within the limitations of Section 768.28, Florida Statutes, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any person which exceeds the sum of $200,000 or any claim or judgments or portions thereof, which, when totaled with all other claims arising out of the same occurrence, exceed the sum of $300,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence or wrongful act of the County, its agents or its employees acting within the scope of their employment. However, nothing herein shall be deemed to indemnify MSC from any liability or claim arising out of the negligence, intentional act, omission, negligent performance or failure of performance of MSC, its agents or its employees, or any other unrelated third party. To the extent allowed by Florida law, the Parties agree that the above sovereign immunity limits do not restrict MSC's ability to assert claims against the County for breach of contract based on any alleged breach of any express written terms of this Agreement. The County hereby represents and warrants that it is self-insured and does not maintain private or independent liability insurance that would provide coverage to the County for injury, damage or death claims related to any incident on port property caused by the negligence of the County, its employees, or its contractors, except to the extent that the County's contractors maintain liability insurance naming the County as an additional insured if so required. Nothing herein shall limit the right of MSC to seek, demand, or claim indemnification or contribution above the above referenced liability limits to the extent such claim or demand may be covered by available insurance.

(c) No Actions to Invalidate Insurance Policies of County. MSC covenants that it will not permit to be done on or about or in the proximity of the Terminal(s), anything which shall invalidate the County's fire, casualty, liability or other insurance policies, if any, with respect to the Terminal(s) or violate any terms thereof, or increase the premiums payable therefore.

(d) Environmental. MSC 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, hazardous wastes and wastes generated on or by MSC Vessels, in, on, or near the Terminal(s). MSC shall indemnify and hold harmless the County, its officers, employees, agents, successors and assigns from, and assume liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges, and expenses (including, but not

limited to, reasonable attorneys' fees, environmental response and remediation costs and the costs and expenses of appellate action, if any) imposed on, incurred by or asserted against the County by any party including, without limitation, governmental entities, to the extent it arises out of, is in connection with or relates in any way to any environmental condition or contamination or any violation of applicable Federal, state or local environmental law with respect to the Terminal(s), caused or created in whole or in part by MSC or its employees, officers, agents or guests.

(e) Insurance Coverage Required. MSC shall procure and maintain throughout the Term, at its sole cost and expense, insurance coverage as required below. MSC shall furnish to Seaport Department, 1015 North America Way, Miami, Florida 33132-2081, Certificates of Insurance which indicate that the insurance coverage has been obtained which meet the requirements as outlined below:

(i) Workers' Compensation Insurance. Said insurance shall cover all persons employed by MSC (other than crew members of the MSC Vessels) or any MSC affiliate in and about the Terminal Area including coverage required under the United States Longshore and Harborworkers Compensation Act (if applicable) and/or as required by Florida Statute 440 or any successor thereto.

(ii) Crew Insurance. Said insurance shall cover all persons employed as crew of the MSC Vessels under a Protection and Indemnity Policy or a Marine Employers Liability Policy to provide coverage for liability under 46 USC Section 688, (The Jones Act) and under General Maritime Law.

(iii) Commercial General Liability Insurance. With respect to the use and activities of MSC and its employees, contractors, agents, customers and guests in and around the Terminal Area, Commercial General Liability Insurance must be in place on a comprehensive basis in an amount not less than $1,000,000 combined single limits for the death of, or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof, or the activities of MSC thereon. This coverage must also include but not be limited to embarkation and disembarkation of MSC Vessels. Miami-Dade County must be shown as an additional named insured with respect to this coverage.

(iv) Pollution Liability Coverage. MSC shall maintain at its sole cost and expense for MSC Vessels used in connection with this Agreement, operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.

(v) Vessel Liability Insurance (Hull and Machinery). Covering all MSC Vessels used in connection with this Agreement, whether owned or chartered, in an amount not less than $10,000,000 per occurrence for hull and property damage.

(vi) Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with MSC's operations in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage.

(f) Insurance Policy Requirements, Generally. Except for Protection and Indemnity Insurance and Hull and Machinery Insurance, all insurance policies required under subpart (e) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division, or Companies holding a valid Florida Certificate,

or

as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Insurance and which are members of the Florida Guaranty Fund.

Certificates will indicate that no material modification or change in insurance shall be made without thirty (30) days advance notice to the certificate holder.

(g) Injury or Damage, Notification to County. In the event of any injury or damage to persons or property in or around the Terminal(s), MSC shall notify the County in writing as soon as reasonably possible after it becomes aware of such injury or damage and shall promptly thereafter furnish to the County copies of all related reports given to MSC's insurance carrier or carriers.

10. EXCLUSIVE VENUE AND CHOICE OF LAW

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any

such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission. MSC hereby consents to personal jurisdiction in the courts of the State of Florida or federal courts venued in Miami-Dade County, Florida. MSC further agrees and hereby authorizes its General Sales Agent MSC Cruises (USA), Inc., to accept service of process on behalf of MSC, and MSC agrees that service of process by the County on MSC Cruises (USA), Inc. as agent for MSC, shall constitute valid service of process on MSC for all purposes.

11. NO ORAL CHANGE OR TERMINATION

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

12. COMPLIANCE WITH APPLICABLE LAWS

Throughout the Term of this Agreement, MSC shall comply with all Applicable Laws relating to this Agreement, MSC's use of the Terminal(s) and MSC's use of the Port. Throughout the Term, the County shall also comply with all Applicable laws in connection with this Agreement.

13. NUISANCE

MSC shall not commit any nuisance on the Port or in the Terminal(s) or do or permit to be done anything that may result in the creation or commission of a nuisance on the Port or in the Terminals.

14. REPRESENTATIONS

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms. The County represents that the execution, delivery and performance by County of this Agreement complies with all laws, rules, regulations and orders applicable to County; and that County has full authority to enter into and perform this Agreement in accordance with its terms.

15. NO EXCLUSIVE REMEDIES

No remedy or election given by any provision in this Agreement 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.

16. FAILURE TO EXERCISE RIGHTS NOT A WAIVER

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

17. EVENTS OF DEFAULT

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

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

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

(b) The County shall be in default under this Agreement if the County fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from MSC specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not unreasonably interfere with the operations of MSC 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 and expeditiously prosecutes such cure to completion so as to minimize any interference with MSC's operations. The foregoing is without prejudice to MSC's rights pursuant to Section 6(e).

18 REMEDIES UPON DEFAULT AND TERMINATION

Subject to Section 3(c) of this Agreement, upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may pursue all remedies available at law or in equity, including, without limitation, termination or specific performance of this Agreement.

19. PORT BOND OBLIGATIONS

Notwithstanding and prevailing over any other provision of this Agreement, the County reserves the right to increase the rates contained in this Agreement herein at a percentage increase no greater than that applied to other multiple-day cruise line operators upon a reasonable determination by the County's independent Financial Advisor that Port revenues in the aggregate will not be sufficient to meet the rate covenant and/or additional bonds tests on all outstanding Seaport bonds obligations or any bond coverage requirements contained therein. The County shall give MSC thirty (30) days written notice of its intent to increase the rates pursuant to this provision of the Agreement, and shall make reasonable efforts, within the limitations of the applicable bond documents, to provide MSC more than thirty (30) days notice. MSC shall have the right to terminate this Agreement by written notice to the County within thirty (30) days of the date of such notice. If MSC does not terminate this Agreement within the thirty (30) day period, the increased rates shall become effective immediately and MSC shall have no other recourse with respect to such increase.

20. ATTORNEY FEES

In the event an action is commenced by a party resulting from a default under this Agreement, each party shall bear their own attorney fees and costs.

21. CONFLICT OF PROVISIONS

If there is any conflict between the provisions of this Agreement and the provisions of an addendum, schedule, exhibit, and/or purchase order attached to this Agreement, the provisions of this Agreement shall prevail.

22. FORCE MAJEURE; INABILITY TO PERFORM

County and MSC shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond the reasonable control of the County, MSC, and their agents, employees, contractors, subcontractors, and guests including, without limitation acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type (whether affecting County, MSC, its contractors or subcontractors), providing that the party claiming the existence of a force majeure event delivers written notice to the other party of such event within fifteen calendar days of the commencement of such event.

23. 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.

24. ASSIGNMENT

The term of this Agreement shall inure to the exclusive benefit of MSC and is binding upon MSC. MSC will not transfer, assign or pledge this Agreement or any rights hereunder without the prior written consent of the County. For the purposes of this Agreement, an assignment shall not be deemed to occur upon a transfer of stock or interest in MSC among its current shareholders.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

25. OBLIGATIONS SURVIVING TERMINATION HEREOF

Notwithstanding and prevailing over any contrary term or provision contained herein, including any early termination rights contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a six 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.

26. LACK OF AGENCY RELATIONSHIP

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

27. NON SOLICITATION

The County agrees that it will not, and will direct its agents, representatives or employees not to, solicit any employee of MSC or any of its subsidiaries to become employed by the County or any of its affiliates, without the prior written consent of MSC.

28. NOTICES

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

FOR COUNTY:	Bill Johnson Director, Seaport Department Miami-Dade County 1015 North America Way Miami, Florida 33132-2081 Telephone Number: 305-371-7678 Telecopy Number: 305-347-4852
with a copy to:	County Attorney 111 Northwest 1st Street Suite 2810 Miami, Florida 33128 Telephone Number: 305-375-5151 Telecopy Number: 305-375-5634
FOR MSC:	MSC Crociere S.A. Chemin-Rieu 12-14 1208 Geneva, Switzerland Attention: Chief Executive Officer Pierfrancesco Vago Telephone Number: +41 22 70 38 888 Telecopy Number: +41 22 70 38 723
with a copy to:	MSC Cruises USA 6750 North Andrews Ave. Fort Lauderdale, Florida 33309 Attention: Chief Executive Officer Richard E. Sasso Telephone Number: +1 954 772 6262 Telecopy Number: + 954 776 5881

29. ACKNOWLEDGMENT BY MSC

(a) Exclusive Franchise Arrangements and County Contracts. MSC acknowledges that the County may be a party to exclusive arrangements for the provision of various goods and services, including but not limited to ATMs, pay telephones, phone cards and vending machines at the Port. Accordingly, MSC shall not install, cause to be installed or permit to be installed pay telephones, ATMs, vending machines or any other device or service for which the County has a contract or agreement in or around the Terminal(s) by any person or entity other than the County, absent the consent of the County and the relevant party with whom the County has so contracted. The County has installed or may install at its expense pay telephones, ATMs, vending machines, signage, or other devices in the Terminal(s), and shall be entitled to all revenue derived therefrom.

(b) Furniture. MSC acknowledges that the furniture and fixtures located in the Terminal(s) and terminal seating areas, are the property of the County. MSC shall not remove or otherwise alter such furniture and fixtures without the express written consent of the County.

(c) Concessions. MSC acknowledges that the County has or may have concession agreements (such as car rental, retail shops or kiosks, ferry operations, etc.) at the Terminal(s). This Agreement shall not affect such concession agreements.

(d) Notwithstanding and prevailing over any other provisions in this Agreement, MSC acknowledges that the County has the sole and exclusive right to any and all retail establishments, advertising, signage or space, or any other revenue-generating activity, in, on or about the Terminal(s).

30. COUNTERPARTS

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement. For purposes of the preceding sentence, a legible facsimile of a properly executed and delivered counterpart shall be acceptable.

IN WITNESS WHEREOF, the parties have caused this document to be executed by its duly authorized officers.

Signed, sealed and delivered
in the presence of:

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

By:_____
Carlos A. Gimenez
Mayor

ATTEST:
CLERK OF THE BOARD

By:_____
Deputy Clerk

Signed, sealed and delivered

MSC Crociere S.A.

ATTEST:

By:_____
Pierfrancesco Vago
Chief Executive Officer

By:_____