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

MEMORANDUM

Agenda Item No. 8(J)(2)

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

DATE: December 1, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving and authorizing the County Mayor to execute Amendment No. 1 to the Terminal Berthing Agreement between Miami-Dade County and Magical Cruise Company, Ltd. d/b/a Disney Cruise Lines, which extends the term of the Terminal Berthing Agreement, specifies the dockage and wharfage rates to be paid during such extension, and amends the parking incentive to be paid to Disney Cruise Lines; and authorizing the County Mayor to exercise any and all cancellation, termination, renewal and other rights and provisions contained in the original Terminal Berthing Agreement as amended by Amendment No. 1

Resolution No. R-1080-15

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

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

MIAMI-DADE COUNTY

Date: December 1, 2015

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing Execution of Amendment No. 1 to the Terminal Berthing Agreement between Miami-Dade County and Magical Cruise Company Ltd., d.b.a. Disney Cruise Line

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution and authorize the execution of Amendment No. 1 to the Original Terminal Berthing Agreement (Original Agreement) between Miami-Dade County (County) and Magical Cruise Company, d.b.a, Disney Cruise Line (Disney), which was approved by the Board on November 20, 2012.

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

This Amendment No. 1 provides Disney with a two-year extension and a one-year unilateral renewal option to the term of their Original Agreement, which is set to expire October 1, 2016. With the execution of this Amendment No. 1, the Original Agreement shall expire October 1, 2018, unless Disney executes its unilateral option to renew for one (1) additional term, which would then expire October 1, 2019.

Disney shall continue to have a minimum annual guarantee to the County of no less than 100,000 passenger movements each fiscal year throughout the term of this Amendment No. 1 including the optional extension. Despite this minimum annual guarantee, the number of Disney ship calls and passenger volumes to date have well exceeded the minimum guarantees each year. The volume of anticipated ship calls during the initial term of this Amendment (FY 2017 and 2018) is expected to generate approximately 430,000 passengers and approximately $7.8 million of revenue to the Port. Should Disney exercise its one-year extension option, an additional $4.1 million of revenue is anticipated to the County.

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 County Mayor or his designee to execute the Amendment No. 1, and for exercising any cancellation, termination, renewal and other rights contained in the Original Agreement as amended by Amendment No. 1.

TRACK RECORD/MONITOR

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

BACKGROUND

Magical Cruise Company Ltd., d.b.a. Disney Cruise Line, is a family-inspired vacation company. The company, headquartered in London, United Kingdom, operates a fleet of four (4) cruise ships, all launched between 1998 to 2012.

In November 2012, the County entered into an Original Agreement with Disney. The initial Term of the Original Agreement was for two (2) years and Disney exercised its options to renew such that the Original Agreement is now set to expire, on October 1, 2016. Disney began to home port at PortMiami in December 2012, with a series of four (4) and five (5) day itineraries to the Eastern and Western Caribbean. Disney committed to a minimum annual guarantee of no less than 100,000 passenger moves annually through the Port each fiscal year. In return, the County granted Disney berthing rights to utilize Terminal F for FY 2012-13 and FY 2013-14. It is worth noting that the actual Disney passenger volumes exceeded their minimum guarantees during each of these fiscal years (147,700 passengers in FY 2013; 186,000 passengers in FY 2014; and 222,300 passengers in FY 2015).

Due to this success, the Port and Disney recommend this Amendment No. 1, which extends the Original Agreement to October 1, 2018. Disney shall have the unilateral option to exercise a one-year renewal, which would then extend the contract until October 1, 2019. The business terms of this Amendment No. 1 will remain commensurate with those of the Original Agreement, whereby the Port will use commercially reasonable efforts to continue to accommodate Disney vessels at Terminal F. However, the Port shall have the right to schedule Disney at another cruise terminal, provided that such use will not interfere with preferential berthing rights of another cruise line agreement and also that such facility is approved by Disney in advance.

Under Amendment No. 1, the Port fees paid by Disney to the County shall continue to increase by three (3) percent annually. The passenger wharfage rate chargeable to Disney during FY 2016-17 shall be $11.68 per passenger embark plus $11.68 per passenger debark. The dockage rate chargeable by the County to Disney in FY 2016-17 shall be $0.36 per gross registered ton. Wharfage and dockage fees shall increase annually through the term by three (3) percent, which is consistent with other County agreements with cruise lines.

Should Disney fail to meet its annual guarantee of 100,000 passengers in any given year, Disney will make a shortfall payment to the County within 30 days of the end of the fiscal year in which the guarantee was not met. Shortfall payments will be based on the then-applicable wharfage rate for the given fiscal year multiplied by the number of passenger moves below the minimum annual guarantee of 100,000 passengers annually.

The recommended Amendment No. 1 further defines the Parking Incentive language in the Original Agreement. Embarkations and parking revenue associated with port-of-call vessels should not be included in the calculation of the Disney's Parking Incentive, nor shall cruise passenger embarkations or parking revenue associated with daily cruises, non-revenue cruises, ferry services, cruises less than 24 hours in duration, cruises to nowhere, or any other category of service excluded from parking revenue share as part of

PortMiami Tariff No. 010 be included in such calculation. This parking incentive is consistent with other cruise agreements previously approved by the Board.

PortMiami is recognized as a world-class port offering a diversity of cruise brands appealing to a broad range of passenger budgets. Disney continues to strengthen Miami-Dade County's offerings of family-oriented brands to passengers throughout the world.

The effective date of this Amendment shall be the earlier of (1) 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; or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

Jack Osterholt, Deputy Mayor

MEMORANDUM

(Revised)

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

DATE: December 1, 2015

FROM: Abigail Price-Williams
County Attorney

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

Please note any items checked.

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

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

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

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

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

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

_____ **No committee review**

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

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(2)
12-1-15

RESOLUTION NO. R-1080-15

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE AMENDMENT NO. 1 TO THE TERMINAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAGICAL CRUISE COMPANY, LTD. D/B/A DISNEY CRUISE LINES, WHICH EXTENDS THE TERM OF THE TERMINAL BERTHING AGREEMENT, SPECIFIES THE DOCKAGE AND WHARFAGE RATES TO BE PAID DURING SUCH EXTENSION, AND AMENDS THE PARKING INCENTIVE TO BE PAID TO DISNEY CRUISE LINES; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL CANCELLATION, TERMINATION, RENEWAL AND OTHER RIGHTS AND PROVISIONS CONTAINED IN THE ORIGINAL TERMINAL BERTHING AGREEMENT AS AMENDED BY AMENDMENT NO. 1

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

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

Section 1. Approves Amendment No. 1 ("Amendment No. 1") to the Terminal Berthing Agreement ("Original Agreement") between Miami-Dade County and Magical Cruise Company Ltd. d/b/a Disney Cruise Lines ("Disney") and authorizes the County Mayor or the County Mayor's designee to execute Amendment No. 1 on behalf of Miami-Dade County, in substantially the form attached hereto as Exhibit A and made a part hereof.

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

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

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **absent**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

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

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard Seavey

Amendment No. 1 to the Terminal Berthing Agreement
Between Miami-Dade County and Magical Cruise Company, Ltd.

THIS AMENDMENT No. 1 ("Amendment No. 1") to the December 3, 2012 Terminal Berthing Agreement ("Original Agreement") by and between Magical Cruise Company Ltd, d.b.a. Disney Cruise Line (hereinafter "Disney"), and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter "the County") is made and entered into this _____ day of _____, 2015, Disney and the County are hereinafter collectively referred to as "the Parties."

WHEREAS, by Resolution No. 987-12 the Original Agreement was approved by the Board of County Commissioners on November 20, 2012; and

WHEREAS, the Original Agreement was set to expire at 12:01 a.m. on October 1, 2014, but also allowed Disney to exercise two one year renewal options; and

WHEREAS, Disney exercised both renewal options in the Original Agreement such that the Original Agreement is now set to expire at 12:01 a.m. on October 1, 2016; and

WHEREAS, Disney and the County intend to extend the term of the Original Agreement from its current expiration at 12:01 a.m. on October 1, 2016 for two (2) years to 12:01 a.m. on October 1, 2018 with an option to renew for one (1) additional extension term to 12:01 a.m. on October 1, 2019 subject certain conditions and notifications set forth below; and

WHEREAS, Disney agrees to maintain its Minimum Annual Passenger Guarantee to the County and adjust its Dockage and Wharfage payments as further described 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. The effective date of this Amendment No. 1 ("Amendment No. 1 Effective Date") is conditioned upon approval of this Amendment No. 1 by the Miami-Dade County Board of Commissioners and the first to occur of either (1) the expiration of any applicable Mayoral Veto period, or (2) the approval and execution of this Amendment No. 1 by the Mayor or the Mayor's Designee, and the filing of such approval with the Clerk of the Board of County Commissioners.

2. Upon the Amendment No. 1 Effective Date, Section 4 of the Original Agreement is amended such that the Original Agreement, as amended hereby by this Amendment No. 1, shall expire at 12:01 a.m. on October 1, 2018 upon the same terms and conditions in the Original Agreement, except as provided in this Amendment No. 1. Disney shall have one unilateral option to renew the Original Agreement as amended by this Amendment No. 1 for one (1) one (1) year term to expire at 12:01 a.m. on October 1, 2019.

3. The first paragraph of Section 3(b)(i) of the Original Agreement relating to passenger wharfage shall be amended to add the following sentence at the end of the paragraph:

On the Amendment No. 1 Effective Date, such rate for FY 2016/17 shall be $11.68 per each passenger embarkation and each passenger debarkation.

4. The first paragraph of Section 3(b)(ii) of the Original Agreement relating to dockage shall be amended to add the following sentence at the end of the paragraph:

   On the Amendment No. 1 Effective Date, such rate for FY 2016/17 shall be $0.36 per gross registered ton.

5. The first paragraph of Section 3(d)(ii) of the Original Agreement relating to parking revenues shall be deleted in its entirety and shall be replaced with a new first paragraph of Section 3(d)(ii) which shall read as follows:

   On the Amendment No. 1 Effective Date, for purposes of this Agreement, Disney's Parking Incentive shall be determined based on the proportion of Disney multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port in a given Fiscal Year during the Operating Term. Embarkations and parking revenue associated with port-of-call vessels shall not be included in the calculation of the Parking Incentive, nor shall cruise passenger embarkations or parking revenue associated with daily cruises, non-revenue cruises, ferry services, cruises less than 24 hours in duration, cruises to nowhere, or any other category of service excluded from multi-day parking revenue as defined in Port of Miami Tariff No. 010 be included in such calculation. As an example, if in a given Fiscal Year during the Operating Term, Disney's multi-day cruise passenger embarkations are ten percent (10%) of the Port's total multi-day cruise passenger embarkations then Disney will receive ten percent (10%) of Parking Revenues collected by the Port in such Fiscal Year. The Port shall remit Parking Revenues to Disney within sixty (60) days of the close of each fiscal quarter during the Operating Term provided Disney is in full compliance with all of its payment and performance obligations under this Agreement.

6. The Original Agreement, as amended by this Amendment No. 1 and all of the terms, conditions, and warranties contained therein, are hereby reaffirmed and shall continue in full force and effect except as specifically modified by this Amendment No. 1.

7. The WHEREAS clauses set forth above are incorporated into the body of this Amendment No. 1 as if fully set forth herein.

8. This Amendment No. 1 shall be governed by Florida Law.

[Signature page follows]

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

MAGICAL CRUISE COMPANY LTD.

By: _____

RUSSELL S. DAYA

EXEC DIRECTOR GLOBAL PORT OPERATIONS & DEVELOPMENTS

ATTEST:

By: _____

_____

MIAMI-DADE COUNTY, FLORIDA

_____

ATTEST:

Clerk of the Board

____. Approved as to form and legal sufficiency