MEMORANDUM

Agenda Item No. 8(J)(1)

TO:	Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners	**DATE:**	October 3, 2023
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Resolution approving First Amendment to the Equipment Lease Agreement (First Amendment) between Miami-Dade County and Miami Cruise Terminal A, LLC (MCTA), with an estimated fiscal impact of $1,115,555.62, inclusive of the initial and renewal terms; and authorizing the County Mayor to execute the First Amendment and exercise all rights contained therein, take any other acts necessary to effectuate the First Amendment, and appoint staff to monitor compliance

Resolution No. R-850-23

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.

Gerald Sanchez for

Geri Bonzon-Keenan
County Attorney

GBK/jp

Memorandum

MIAMI-DADE COUNTY

Date: October 3, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Subject: Resolution Approving First Amendment to the Equipment Lease Agreement between Miami-Dade County and Miami Cruise Terminal A, LLC for the Rental of Two PortMiami-owned Passenger Boarding Bridges for Cruise Terminal A.

Executive Summary

The purpose of this item is to seek authorization from the Board of County Commissioners (Board) to execute the First Amendment to the Equipment Lease Agreement between Miami-Dade County ("County") and Miami Cruise Terminal A, LLC ("MCTA"), providing for the rental of two (2) PortMiami-owned Passenger Boarding Bridges (PBBs) for use at Cruise Terminal A in exchange for rental payments to the County.

This renewal is intended to (1) extend the term of the lease agreement by three (3) years retroactive to February 1, 2023, (2) modify the termination and convenience clause by requiring MCTA to provide written notice of termination one hundred and eighty (180) days in advance, (3) increase monthly rental fees by a 3% annual escalation retroactive to February 1, 2023, and (4) modify the purchase option language to include a mutually-agreed-upon clause affording both parties the flexibility to negotiate the purchase price of the PBBs at a future date should MCTA be interested in executing this option.

Recommendation

It is recommended that the Board approve the accompanying resolution approving and authorizing the County Mayor or Mayor's designee to execute the renewal of the Lease Agreement between the County and MCTA.

Delegated Authority

This item authorizes the County Mayor or County Mayor's designee to (1) execute the renewal of the Equipment Lease Agreement with MCTA and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, and/or other County rights conferred in the Agreement; (2) take any other acts and approve any other agreements, including amendments to the aforementioned agreements that have no adverse fiscal impact to the County and have been reviewed and approved by the County Attorney's Office as to form and legal sufficiency, as are necessary to give effect to these amendments.

Scope
PortMiami is located within District 5, represented by Commissioner Eileen Higgins. 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
Since the Board's execution of the original Equipment Lease on July 31, 2018, the County has received $986,000 in lease payments over the term of the agreement. The proposed renewal provides for a 3% annual escalation to the base rent of $17,000 retroactive to the effective date of February 1, 2023. This is consistent with the Port's annual Tariff and contract escalation rates. During the initial 3-year renewal term, rental payments due to the County in the amount of $649,459.91, are guaranteed. If the two (2) 1-year renewal options are exercised, revenues will be additional $466,095.71, with a cumulative value $1,115,555.62 in rental revenue to the County. Additionally, at any point during the term of the Agreement, MCTA may elect to purchase both PBBs for a price mutually agreed upon by both parties or extend the term of the Agreement under mutually agreed upon terms and Board approval.

Track Record/Monitor
The Seaport Department staff members responsible for monitoring the agreement are Andy Hecker, Deputy Port Director, and George Andrews, Assistant Director of Economic Development and Strategy.

Background
Construction of Cruise Terminal A, Royal Caribbean's iconic "Crown of Miami", was substantially completed in the fall of 2018. On July 24, 2018, the County approved Resolution No. R-786-18, entering into a Lease Agreement with Wesco Construction Company ("Wesco"), a Port tenant providing project administration and construction services to MCTA, to lease two (2) PBBs no longer needed by the Port due to changes in ship deployment, terminal, and vessel specifications. As required by the original lease agreement, the contract was assigned from Wesco to MCTA on November 12, 2018, within 45 day of Cruise Terminal A's substantial completion. At this time, MCTA assumed all rights and obligations previously held by Wesco.

Both PBBs were leased in "as-is, where-is" condition, and were modified, at MCTA's cost, to meet the needs of Royal Caribbean operations at Cruise Terminal A. Tenant's responsibility also included insuring and maintaining the PBBs during the term of the agreement. Currently, the PBBs are in excellent working condition, and MCTA has expressed its desire to extend the lease agreement for an additional three (3) years, with two (2) 1-year options to renew.

This equipment lease guarantees the County at least $649,459.91 in Minimum Rent, regardless of early termination by any of the parties. Should the two, renewal extensions be exercised, the cumulative value of the contract will be $1,115,555.62. An annual escalation of three percent (3%) will retroactively apply to all lease payments effective on February 1, 2023, and extend through both the initial and renewal term. It is noteworthy that this escalation did not apply in the original lease agreement.

The amendment further modifies Section 4 (Term and Termination) of the original agreement by increasing the termination notice from sixty (60) days to one hundred and eighty (180) days, giving the County additional time to research viable relocation alternatives and/or sale options if tenant decides to terminate the lease.

Section 16 (a) of the Agreement (Purchase of Long-Term Lease Option) is also amended to allow MCTA, at any point during the term, to purchase the PBBs for a mutually agreed upon price based on future considerations, including, but not limited to, market conditions any other relevant determining factors. MCTA may also choose to extend the lease based on mutually acceptable stipulations and Board approval.

Approval of this item is highly recommended to ensure continuity of service and operations at PortMiami's Cruise Terminal A. These passenger boarding bridges are indispensable and essential to Royal Caribbean's operations at Cruise Terminal A, which currently welcomes approximately 1.6 million passengers on an annual basis.

Jimmy Morales
Chief Operations Officer

FIRST AMENDMENT TO
EQUIPMENT LEASE AGREEMENT

THIS FIRST AMENDMENT to the Equipment Lease Agreement dated July 31, 2018, by and between Miami-Dade County (the "County") and Miami Cruise Terminal A, LLC ("MCTA"), as assignee of Wesco Construction Company, Inc. ("Wesco"), is entered into as of ___, 2023 (the "First Amendment Effective Date") on the terms and conditions set forth below.

Recitals

WHEREAS, the County and Wesco entered into the Agreement for the purpose of leasing to Wesco two used passenger boarding bridges manufactured by FMT Aircraft Gate Support Systems AB, both Model No. 02-811/15EMG, one bearing Serial No. 02-811/001 and the other bearing Serial No. 02-811/002 (together, the "PBBs"); and

WHEREAS, after the County and Wesco entered into the Agreement, and as required by the Agreement, Wesco assigned the Agreement to MCTA, thereby releasing Wesco of all covenants, liabilities, and obligations under the Agreement, all of which were assumed by MCTA; and

WHEREAS, the initial term of the Agreement, inclusive of all renewals authorized under the Agreement, expired on January 31, 2023 (the "Original Expiration Date"), and the County and MCTA have continued to perform under the Agreement on a month-to-month basis; and

WHEREAS, the County and MCTA desire to extend the term of the Agreement and amend other terms and conditions of the Agreement in the manner set forth in this First Amendment,

NOW, THEREFORE, in exchange of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and MCTA agree as follows:

Terms and Conditions

1. **Term and Termination**. In addition to the Initial Term and Renewal Terms provided under the Agreement, MCTA shall be entitled to and hereby exercises an Additional Extension Term that shall run from the Original Expiration Date for a period of three (3) years, plus the amount of time lapsed between the original expiration date and the execution of this First Amendment upon its approval by the Board. Further, at the election of MCTA, this Agreement may be extended for two (2) additional one-year periods (each an "Additional Extension Renewal Term"), each running from the conclusion of the preceding period. Each Additional Extension Renewal Term shall be deemed agreed and exercised unless at least three (3) months before the conclusion of the then-current term, MCTA sends the County written notification that the Additional Extension Renewal Term will not be exercised.

2. **Termination for Convenience**. Notwithstanding and prevailing over anything to the contrary in the Agreement, MCTA may terminate the Agreement, as amended through

this First Amendment, at any time during the Additional Extension Term or any Additional Extension Renewal Term, with or without cause, by providing the County with at least one hundred eighty (180) days' written notice prior to the effectiveness of the termination. Without limiting the County's right to 180-days' written notice under the preceding sentence, to the extent MCTA (or any related entity) enters into an agreement to purchase or lease new or used passenger boarding bridges for use at Cruise Terminal A, MCTA shall provide written notice to the County at least thirty (30) days from the effective date of such agreement.

3. **Amended Rent**. Notwithstanding and prevailing over the rental amounts set forth in § 5 of the Agreement, retroactive to February 1, 2023 ("Amended Rent Date"), MCTA shall pay to the County an Amended PBB Monthly Rental Amount in accordance with the table set forth below, whereby the monthly rental amount shall be subject to a three percent (3%) escalation payable in the prior rental year.

Extension Term ***	% Annual Escalation	Monthly Rent 2 PBBs		Annual Rent 2 PBBs	
Year 1	3%	$	17,510.00	$	210,120.00
Year 2	3%	$	18,035.30	$	216,423.60
Year 3	3%	$	18,576.36	$	222,916.31
			Initial Term	$	649,459.91
Renewal Option 1	3%	$	19,133.65	$	229,603.80
Renewal Option 2	3%	$	19,707.66	$	236,491.91
			Renewal Term	$	466,095.71
				$	1,115,555.62

*** Actual dates will be inserted after Board approval.

MCTA shall pay any shortfall in rent arising from the period between the Amended Rent Date and the First Amendment Effective Date in a lump sum as part of the first payment due under this First Amendment. Payment shall otherwise be due in the same manner as provided in the Agreement.

4. **Guaranteed Rent**. Notwithstanding MCTA's rights of termination under the Agreement, as amended through this First Amendment, as a condition precedent to the effectiveness of any termination, MCTA shall be required to have paid the County a minimum of Six Hundred Forty-Nine Thousand Four Hundred Fifty-Nine Dollars and Ninety-One Cents ($649,459.91) from the Original Expiration Date through the effective date of such termination (the "Guaranteed Rent"). To the extent MCTA has not paid the County

at least the Guaranteed Rent, before MCTA's termination takes effect, MCTA shall be required to make a lump-sum payment to the County in the amount of the difference between the amount of rent actually paid and the Guaranteed Rent.

5. **Extension of Purchase or Long-Term Lease Option Rights**. Notwithstanding and prevailing over any other term in the Agreement, at any point during the Additional Extension Term and any Additional Extension Renewal Term, MCTA shall have the right to purchase the PBBs at a mutually agreed upon price or extend the term of the Agreement under mutually agreed upon terms and Board approval.

6. **Counterparts; Signatures**. This First Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. Signatures to this First Amendment may be delivered by facsimile or electronic transmission (i.e., pdf format), and for purposes of this Amendment, signatures transmitted by facsimile or electronic transmission will be deemed to be original signatures.

7. **Authority**. Each person signing this First Amendment on behalf of a party represents and warrants that he or she has full power and authority to enter into this First Amendment and to bind the party on whose behalf they are signing respectively.

8. **Governing Law and Venue**. This First Amendment and the interpretation of its terms shall be governed by and construed in accordance with the laws of the State of Florida, without application of conflicts of law principles that would result in the application of non-Florida law. Venue for any judicial, administrative or other action to enforce or construe any term of this First Amendment or arising from or relating to this First Amendment shall lie exclusively in Miami-Dade County, Florida.

9. **Severability**. If any clause or provision of this First Amendment is determined to be illegal, invalid or unenforceable under present or future laws effective during the term of this First Amendment, then and in that event, it is the intention of the Parties hereto that the remainder of this Amendment shall not be affected thereby, and that in lieu of such illegal, invalid or unenforceable clause or provision there shall be substituted a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal valid and enforceable.

10. **Successors and Assigns**. The provisions of this First Amendment shall bind, and the benefits and advantages shall inure to, the respective permitted successors and assigns of the Parties hereto.

11. **Entire Agreement**. This First Amendment contains the entire agreement of the Parties hereto as to the subject matter of this First Amendment, and no prior representations, inducements, letters of intent, promises or agreements (other than the Agreement, as amended hereby), oral or otherwise, between the Parties not embodied or referred to herein shall be of any force and effect. Any amendment to this First Amendment must be in writing and signed by the Parties hereto.

12. **Paragraph Headings**. The headings of the paragraphs of this First Amendment are inserted only for the purpose of convenience of reference and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this First Amendment or any part or portion thereof, nor shall they otherwise be given any legal effect.

13. **Third-Party Beneficiaries**. The intended beneficiaries of this First Amendment are its signatories; no additional persons shall be entitled to claim any rights or benefits under this First Amendment.

IN WITNESS WHEREOF, the Parties have signed this First Amendment with effect as of the First Amendment Effective Date set forth above.

MIAMI CRUISE TERMINAL A, LLC

By:____________________________

Name: Khaled Naja

Title: CEO

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

By:____________________________
Daniella Levine Cava
County Mayor

Approved as to legal form and sufficiency

____
Assistant County Attorney

ATTEST: CLERK OF THE BOARD

By:____________________________
Deputy Clerk

MEMORANDUM
(Revised)

TO:	Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners	**DATE:**	October 3, 2023
FROM:	Geri Bonzon-Keenan County Attorney	**SUBJECT:**	Agenda Item No. 8(J)(1)

Please note any items checked.

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

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

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

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

_______ **Budget required**

_______ **Statement of fiscal impact required**

_______ **Statement of social equity required**

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

_______ **No committee review**

_______ **Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**

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

Approved ______________________ Mayor
Veto __________
Override __________

Agenda Item No. 8(J)(1)
10-3-23

RESOLUTION NO. R-850-23

RESOLUTION APPROVING FIRST AMENDMENT TO THE EQUIPMENT LEASE AGREEMENT (FIRST AMENDMENT) BETWEEN MIAMI-DADE COUNTY AND MIAMI CRUISE TERMINAL A, LLC (MCTA), WITH AN ESTIMATED FISCAL IMPACT OF $1,115,555.62, INCLUSIVE OF THE INITIAL AND RENEWAL TERMS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE FIRST AMENDMENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN, TAKE ANY OTHER ACTS NECESSARY TO EFFECTUATE THE FIRST AMENDMENT, AND APPOINT STAFF TO MONITOR COMPLIANCE

WHEREAS, this Board desires to accomplish the objectives set forth in the accompanying memorandum, which is incorporated herein by reference,

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

Section 1. The foregoing recital is approved and incorporated herein.

Section 2. The Board approves the First Amendment to the Equipment Lease Agreement (the "First Amendment") between Miami-Dade County and Miami Cruise Terminal A, LLC, in substantially the form attached to the accompanying memorandum, with an estimated fiscal impact of up to $1,115,555.62, inclusive of the initial and renewal terms.

Section 3. The Board authorizes the County Mayor or County Mayor's designee to (1) designee to execute the First Amendment for and on behalf of the County and to exercise all rights contained therein, including rights of extension and (2) take any other acts as are necessary to give effect to the First Amendment.

Section 4. The Board directs the County Mayor or County Mayor's designee to appoint staff to monitor compliance with the First Amendment.

The foregoing resolution was offered by Commissioner **Anthony Rodriguez**, who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman **aye**
Anthony Rodríguez, Vice Chairman **aye**

Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Kevin Marino Cabrera	**aye**	Sen. René García	**absent**
Roberto J. Gonzalez	**aye**	Keon Hardemon	**aye**
Danielle Cohen Higgins	**aye**	Eileen Higgins	**aye**
Kionne L. McGhee	**aye**	Raquel A. Regalado	**aye**
Micky Steinberg	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 3rd day of October, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

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

Miguel A. Gonzalez