Memorandum

MIAMI-DADE COUNTY

Date: January 17, 2024

Agenda Item No. 8(J)(1)

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

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Resolution No. R-31-24

Subject: Resolution Approving Agreement Amending Cruise Terminal Agreement ("Agreement") between Miami-Dade County ("County") and Carnival Corporation ("Carnival"); Amending Preferential Berthing Agreement between the County and Carnival; and Retroactively Terminating Covid-19 Recovery Rider

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Executive Summary

The purpose of this item is to seek authorization by the Board of County Commissioners (Board) to approve and execute: (1) Amendment to the Cruise Terminal Agreement between Miami-Dade County and Carnival for Cruise Terminals D & E, approved by the County on October 20, 1998, through Resolution No. R-1196-98; (2) Amendment to the Preferential Berthing Rights Agreement for Cruise Terminal F between the County and Carnival, approved by the Board on September 19, 2019, through Resolution No. R-990-19; and (3) retroactive termination of the Covid-19 Recovery Rider ("Rider") executed by both parties on December 9, 2020.

The proposed amendments intend to combine the passenger Minimum Annual Guarantees (MAG) for both agreements so they apply across Cruise Terminals D, E, and F (CT D, CT E, and CT F), require additional passenger movements for fiscal years 2023 through 2025, retroactively expire the Covid Recovery Rider, modify the current berthing rights at Cruise Terminals D, E & F, and establish a commitment for Carnival to utilize shore power for any enabled vessels berthing at shore-power-capable berths at PortMiami.

Recommendation

It is recommended that the Board approve the accompanying resolution approving and authorizing the County Mayor or the County Mayor's designee to execute: (1) Amendment to the Cruise Terminal Agreement between the County and Carnival for CT D and E; (2) Amendment to the Preferential Berthing Rights Agreement between the County and Carnival for CT F; and (3) retroactive termination of the Covid-19 Recovery Rider executed by PortMiami and Carnival on December 9, 2020 and to exercise any County rights conferred therein.

Delegated Authority

In accordance with Section 2-8.3 of the Miami-Dade County Code relating to delegation of Board authority, there are no authorities beyond those specified in the resolution, which includes the authority for the County Mayor or County Mayor's designee to execute the 2 Amendments with Carnival, exercise all rights contained therein, and to retroactively terminate the Covid-19 Recovery Rider with Carnival.

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

The cancellation of Carnival's Covid Rider at Cruise Terminal F reinstates Carnival's passenger obligations, plus an additional 300,000 passenger movements during fiscal year 2023 through 2025. Carnival's obligation of 750,000 passenger movements per annum at CT F will be reinstated with this amendment where under the Covid-19 Recovery Rider the obligation was suspended.

The overall positive fiscal impact of this item is $22 million, increasing the total fiscal impact for all Carnival Agreements and Amendments to $1.29 billion from the current $1.27 billion, accounting for passenger guarantees generating unitary rate revenues received by the Port and market incentives paid to Carnival compared to the parties' obligations and guarantees under the remaining terms of the Covid-19 Recovery Rider. The positive fiscal impact of $22 million in the proposed amendment includes a guaranteed $28.452 million in unitary fee revenue that the Port will receive, minus $6.448 million in market incentives that the Port will pay.

The amendment will increase the MAG by an additional 100,000 passengers annually for three (3) consecutive years from FY 2023 through FY 2025 from 2.25 million passengers to 2.35 million passengers which more than offsets Carnival's passenger shortfall in FY 2022 of 249,615 passengers, which, under the Covid Recovery Rider, required Carnival to ensure that PortMiami was the highest utilized United States port in terms of passenger movements.

As a result of the termination of the Covid-19 Recovery Rider on December 30, 2022, Carnival shall be entitled to receive its Market Incentive as provided in the original agreement retroactively to December 31, 2022.

There is also an acceleration of Capital Recovery Surcharge (CRS) revenue payable to the County for Fiscal Years 2023 through 2025 that could otherwise have been paid in Fiscal Years 2040 through 2043.

The Amendment also combines the MAG of 2.25 million passengers across CT D, CT E, and CTF will become effective from FY 2023 until FY 2035, provided that Carnival exercises its 7-year renewal option in 2028 for CT D and CT E.

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

PortMiami and Carnival share a long and successful relationship since 1972, when the company's first ship, the transatlantic ocean liner TSS Mardi Gras, made its maiden voyage from Miami. Launched by entrepreneur and pioneer Ted Arison, the cruise line has continued to shape and revolutionize the industry, becoming the largest global cruise company and among the most relevant leisure travel companies.

Carnival has a fleet of over 90 ships visiting over 700 ports worldwide. Its portfolio of brands includes AIDA Cruises, Carnival Cruise Line, Costa Cruises, Cunard, Holland America Line, Princess Cruises, P&O Cruises (Australia), P&O Cruises (UK) and Seabourn. With its global corporate headquarters in Miami, the company is a leader in terms of passenger movements and has played a major role in making PortMiami the Cruise Capital of the World.

On October 15, 1998, the Board approved Resolution No. R-1196-98, authorizing the execution of a Cruise Terminal Agreement with Carnival for conducting cruise vessel berthing operations with guaranteed passenger volumes. This agreement had a 15-year term with a five-year renewal option. The agreement provided the Port with significant guaranteed passenger volumes and revenues.

On June 15, 2010, the Board approved Amendment No. 1, via Resolution No. R-967-10, which approved the execution of the optional renewal period early and an extension of the Term for an additional five years through FY 2018. The Amendment outlined MAG to the County and incorporated the concept of a Unitary Fee, which combines all Port fees into a single rate per passenger. It also provided a Marketing Incentive to Carnival through shared parking revenue.

On May 3, 2011, the Board approved Amendment No. 2, via Resolution No. R-343-11, which guaranteed the then-latest newbuild, Carnival Breeze, to homeport at PortMiami. Amendment No. 2 also committed the Port to make certain terminal improvements to CT D and provided additional marketing incentives based on Carnival's passenger throughput.

On February 3, 2015, the Board approved Amendment No. 3, via Resolution No. R-160-15, which guaranteed the then-new Carnival Vista to homeport at PortMiami and extended the term of the Agreement by an additional 10 years to September 30, 2028, with one seven-year renewal option. As a result of this Agreement, the County made certain capital improvements at CT D and E in order to accommodate Carnival's vessels.

On September 19, 2019, to accommodate Carnival's growth at PortMiami, specifically their XL Class mega vessels, the County and Carnival entered into an agreement to renovate and expand CT F. The CT F Preferential Berthing Agreement was executed by the Board through Resolution No. R-990-19, and approved the improvements to CT F, as well as preferential rights at the terminal during the 20-year term. Improvements to CT F were completed in November 2022, as Carnival Cruise Line's new flagship Carnival Celebration arrived at its new home in PortMiami, just in time for the company's celebration of 50 years of fun. The newly redesigned and expanded Terminal F opened its doors in conjunction with Carnival Celebration's arrival as the first LNG-powered cruise ship based at PortMiami.

With strong occupancy levels surpassing the 100% threshold and booking volumes higher than pre-pandemic 2019 levels, Carnival continues to hold a dominant position as a leader in the cruise industry.

Minimum Annual Guarantees: Cruise Terminals D, E & F

Under the existing Third Amendment to the CT D and E agreement, the MAG Payment ("MAGP") is equivalent to 1.5 million passenger movements annually. Similarly, the MAGP for CT F is equivalent to 750,000 passenger movements, as stipulated under their CT F Preferential Berthing Rights Agreement. Under this proposed Amendment, Carnival's guarantee will be combined at all three terminals (rather than each terminal having its own guarantee) while continuing to maintain a collective minimum guarantee of 2.25 million passengers each year.

Additionally, Carnival will guarantee an extra 100,000 passenger movements during Fiscal Years 2023, 2024 and 2025 to address a shortfall in the commitment contained in Section 2.02 (b)(i) in the Covid-19 Recovery Rider, which required that PortMiami remain the highest utilized United States Port in terms of passenger movements during the years Carnival was under the Covid Rider. Therefore, the combined MAG for FY 2023, 2024 and 2025 will be increased to 2.35 million passengers annually, with additional unitary revenue of approximately $6.6 million during these three years.

An additional guarantee of $21.8 million in unitary revenue becomes effective with this amendment, removing the remaining CT F provisions in the Covid-19 Recovery Rider. Passenger movements for FY 2023 will be prorated based on the expiration of the Covid Recovery Rider on December 30, 2022.

Amendment of Berthing Rights: Cruise Terminals D, E & F

In consideration for combining all passenger guarantee payments for CT D, E & F, the Port will be entitled to advanced berthing notification for CT D & E.

This amendment, Amendment No. 4, to the Cruise Terminal Agreement for CT D and E will increase the advance berthing notification window stipulated in the original contract for CT D, from ninety (90) days to twelve (12) months prior to the beginning of the 6-month cruise period covered by the berth schedule.

Amendment No. 1 to the Preferential Berthing Rights Agreement for CT F modifies the berthing rights section to require Carnival to provide updated Berth Schedule(s) no later than 12 months prior to the beginning of the 6-month cruise period covered by the then current berth schedule. Carnival shall notify the County of any changes or amendments to the berth schedule not less than 12 months prior to the earliest date affected.

These extended berthing windows are a significant improvement from the ninety (90) days stipulated in the existing CT D & E agreement and provide greater flexibility for the County to use the terminals for additional business. These berthing windows are also consistent with other cruise contracts executed in recent years with our partners. Furthermore, the additional passenger throughput at CT F will allow the Port to maximize the use of shore power once it is implemented.

The County will also retain berthing rights a CT E on Sundays during the Winter 25-26 season (running from November 2025 through April 2026) for use by another cruise line.

Termination of Covid-19 Recovery Rider

This amendment seeks the termination of the Covid-19 Recovery Rider retroactively to Fiscal Year 2023 for Cruise Terminal F. The Rider, approved by both parties in December 2020, provided relief from the Covid pandemic, temporarily suspending Carnival's minimum payment guarantee and incentives. The Covid-Rider for CT D and E previously terminated on December 31, 2022. However, the Covid Rider for CT F was in effect for two years after substantial completion of new CT F (November 2024). This item seeks termination of the Covid Recovery Rider at CT F retroactively to the same time as CT D & E while resuming all contractual obligations stipulated in the original contracts.

Shore Power

On February 17, 2021, Miami-Dade County, Florida Power & Light, and six (6) leading cruise line companies signed a joint statement agreeing to work together to bring Shore Power to PortMiami. Consequently, on November 2, 2021, via Resolution No. R-1039-21, the Miami-Dade County Board of County Commissioners authorized the County Mayor or the County Mayor's designee to award a contract for construction services and equipment for Shore Power.

Under the Agreement, Carnival agrees to utilize shore power for any shore power-enabled vessel berthing at shore-power-capable berths at PortMiami when power is available. Carnival will be required to operate and reimburse the County for the shore power fees outlined in PortMiami Tariff No. 010, approved annually by the Board as part of the Budget process. In addition, Carnival agrees to reimburse the County for the actual electrical costs incurred by Carnival vessels. Both parties have agreed to revisit the commitments stipulated in this amendment if FPL rates exceed the 50% threshold established in the agreement.

Cancellation of Provisioning Building Project

At the request of Carnival, a new Provisioning Building had been considered and planned to service and expand capabilities at CT D & E. Although the County and Carnival had not entered a binding agreement requiring implementation of this project, the Port and desire to memorialize that the current provisioning tent at CT E and Shed B meet the operational needs of the cruise line; therefore, the $8.5 million project has been cancelled until further notice. Should the need arise for a provisioning building in the future, the Port and Carnival will consider all viable options at the time under separate agreement, which will require future Board approval.

Jimmy Morales
Chief Operations Officer

Memorandum

MIAMI-DADE COUNTY

Date: December 21, 2023

To: Eugene Love, Agenda Coordinator

From: Jimmy Morales, Chief Operations Officer

Subject: Resolution Approving Agreement Amending Cruise Terminal Agreement between Miami-Dade County and Carnival Corporation; Amending Preferential Berthing Agreement between the County and Carnival; and Retroactively Terminating Covid-19 Recovery Rider

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I am requesting resolution approving and authorizing the amendment to Cruise Terminal Agreement ("Agreement") between Miami-Dade County ("County") and Carnival Corporation ("Carnival"); amending Preferential Berthing Agreement between the County and Carnival; and Retroactively Terminating Covid-19 Recovery Rider be placed on the January 9, 2024, PortMiami, Resiliency and Sustainability Committee Meeting Agenda.

This item was provided to the Agenda Coordination Office after the submission deadline. The item is time sensitive to support Carnival Corporation request to finalize the termination of the COVID-19 Rider. This item will also allow the parties to meet contractual obligations for project delivery schedules that generate economic benefits for the County.

Please process the item notwithstanding that the three-day rule may be applicable to this item. I am aware that this item is subject to approval for placement on the agenda by the appropriate committee Chair as well as by the Board Chairperson, and review by the Office of the County Attorney.

Approved by Mayor or Mayor's Designee Signature	**Jimmy Morales** Print Name
Approved by Policy Director or Designee Signature	**Nicole Tallman** Print Name

cc: Geri Bonzon-Keenan, County Attorney
CAOagenda@miamidade.gov

MEMORANDUM

(Revised)

TO:	Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners	**DATE:**	January 17, 2024
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)
1-17-24

RESOLUTION NO. R-31-24

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AMENDING CRUISE TERMINAL AGREEMENT AND PREFERENTIAL BERTHING AGREEMENT AND TERMINATING CORONAVIRUS DISEASE 2019 RECOVERY RIDER (AGREEMENT) BETWEEN CARNIVAL CORPORATION AND MIAMI-DADE COUNTY, WITH AN ESTIMATED FISCAL IMPACT OF $22,000,000.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL RIGHTS CONTAINED THEREIN UNLESS RESERVED TO THE BOARD, INCLUDING RIGHTS OF RENEWAL AND TERMINATION; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE SUCH OTHER ACTS, WITHIN CERTAIN PARAMETERS, AS NECESSARY TO GIVE EFFECT TO THE AGREEMENT CONTEMPLATED HEREIN

WHEREAS, this Board desires to accomplish the objects set forth in the accompanying County Mayor's memorandum, a copy of which is incorporated by reference,

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

Section 1. Adopts as true and correct and incorporates herein the foregoing recital.

Section 2. Approves and authorizes the County Mayor or County Mayor's designee to execute the "Agreement Amending Cruise Terminal Agreement and Preferential Berthing Agreement and Terminating Coronavirus Disease 2019 Recovery Rider" (the "Agreement") between Carnival Corporation and Miami-Dade County, in substantially the form attached hereto, with an estimated fiscal impact of up to $22,000,000.00. This Board further authorizes the County Mayor or County Mayor's designee to exercise all rights contained in the Agreement (except if reserved to the Board), including rights of renewal and termination.

Section 3. Authorizes the County Mayor or County Mayor's designee to take any other acts necessary to give effect to the agreement contemplated herein; provided, however, that such acts shall (1) be consistent with the disclosures in the memorandum and the delegations set forth in this resolution; (2) not put the County in any less favorable position, financially or otherwise, than that outlined in the accompanying memorandum, this resolution, and the agreement accompanying this resolution; (3) not contravene the policy, intent, or purpose of the Board as expressed in any of its legislative enactments; and (4) as applicable, be reduced to writing and subject to the approval of the County Attorney's Office as to form and legal sufficiency.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins**, who moved its adoption. The motion was seconded by Commissioner **Juan Carlos Bermudez** 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	**aye**
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 17th day of January, 2024. 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

AGREEMENT AMENDING CRUISE TERMINAL AGREEMENT AND PREFERENTIAL BERTHING AGREEMENT AND TERMINATING COVID-19 RECOVERY RIDER

This Agreement is entered into on this ___ day of ___ 2023 by and between Miami-Dade County (the "County"), a political subdivision of the State of Florida, and Carnival Corporation ("Carnival"), a Panamanian corporation authorized to do business in the State of Florida. The County and Carnival are each a "Party," and, jointly, are the "Parties."

RECITALS

WHEREAS, the Parties have enjoyed a mutually beneficial relationship since October 20, 1998, when the Miami-Dade County Board of County Commissioners (the "Board") adopted Resolution No. R-1196-98, approving a Cruise Terminal Agreement between the County and Carnival; amended by Resolution No. R-697-10, approving Amendment No. 1 to the Cruise Terminal Agreement in 2010; Resolution No. R-343-11, approving Amendment No. 2 to the Cruise Terminal Agreement in 2011; Resolution No. R-160-15, approving Amendment No. 3 to the Cruise Terminal Agreement in 2015; and Resolution No. 990-19, approving certain amendments to the Cruise Terminal Agreement, through which the Parties entered into various commitments regarding Carnival's preferential berthing rights at terminals D and E at the PortMiami (the "D/E Terminal Agreement"); and

WHEREAS, the relationship between the County and Carnival significantly deepened on September 19, 2019, when the Parties entered into that certain Cruise Terminal F Agreement (the "CTF Agreement"), an agreement of up to 34 years providing for significant investments into multiple cruise terminals at PortMiami and an increased passenger movement commitment; and

WHEREAS, as further demonstration of the significance of the Parties' relationship, on December 7, 2020, in the midst of the outbreak of the COVID-19 pandemic that sidelined passenger cruising until July 2021, the Parties entered into that certain COVID-19 Recovery Rider, temporarily relieving Carnival of obligations relating to annual minimum passenger guarantees, while the County received assurances regarding relative passenger volumes at PortMiami and was authorized to keep certain revenues that would otherwise have been paid to Carnival;

NOW, THEREFORE, in exchange for adequate and valuable consideration, the receipt of which the Parties acknowledge, the Parties enter into this Agreement on the following terms and conditions:

TERMS AND CONDITIONS

ARTICLE I
General Conditions

1.01 **Incorporation of Recitals.** The Parties agree each of the foregoing recitals are true and correct and are incorporated herein.

1.02 **Effective Date.** This Agreement shall become effective upon its execution by all Parties, provided that the County shall not be required to execute the Agreement before the effective date of the resolution of the Board of County Commissioners approving this Agreement (the "Effective Date").

1.03 **Term of Agreement.** This Agreement shall run coterminous with the D/E Terminal Agreement, in the case of obligations arising out of this Agreement and pertaining to Cruise Terminals D and E, and the CTF Agreement, in the case of obligations arising out of this Agreement and pertaining to Cruise Terminal F. Nothing herein shall be construed to alter the duration of either the D/E Terminal Agreement or the CTF Agreement.

1.04 **Nature of Agreement.** Nothing herein shall be construed to alter the nature of the D/E Terminal Agreement or CTF Agreement, it being understood by the Parties that, under both agreements, no interest or estate in real property or the improvements located at Cruise Terminals D, E, or F is created by this Agreement.

ARTICLE II
Conclusion of COVID-19 Recovery Period

2.01 **Conclusion of COVID-19 Recovery Period.** Notwithstanding anything to the contrary in the COVID-19 Rider, the Second Phase of the COVID-19 Recovery Period as to the D/E Terminal Agreement expired on December 30, 2022 and as to the CTF Agreement shall be deemed terminated as of December 30, 2022.

2.02 **Effect of Conclusion of COVID-19 Recovery Period.** All rights and obligations of the Parties under the COVID-19 Rider shall terminate as of the effective date of this Agreement except that the rights and obligations set forth in §§ 2.03 and 2.04 (a) of the COVID-19 Rider shall survive such termination.

ARTICLE III
Minimum Annual Guarantees

3.01 **Minimum Annual Guaranteed Payment.** Carnival shall make a Minimum Annual Guaranteed Payment in accordance with Exhibit 1 to this Agreement, which supersede Exhibit B to the D/E Agreement and Exhibit C to the CTF Agreement. Exhibit 1 to this Agreement shall represent the cumulative amount of Minimum Annual Guaranteed Payment due under the D/E Agreement and CTF Agreement, such that satisfaction of the Minimum Annual Guaranteed Payment amount set forth Exhibit 1 to this Agreement shall satisfy the Minimum Annual Guaranteed Payment obligation under the D/E Agreement and CTF Agreement.

ARTICLE IV
Berthing

4.01 **Cruise Terminal D Berthing Schedule.** Notwithstanding anything to the contrary in the D/E Agreement, with respect to Carnival's use of its Preferential Berthing Rights at Cruise Terminal D, during the Term, Carnival shall provide updated Berth Schedule(s) to the Port Director or designee no later than 12 months prior to the beginning of the 6-month cruise period covered by the then current Berth Schedule. Any berthing dates not claimed by Carnival shall be available to the County for use by any third-party cruise line provided such dates do not extend beyond the then current Berth Schedule. Carnival shall notify the County, in writing, of any changes or amendments to the Berth Schedule not less than 12 months prior to the earliest date affected by the change to such schedule, provided that Carnival's changes or amendments shall be accepted by County as long as such changes or amendments do not create a conflict between Carnival's use of Cruise Terminal D and any third-party cruise line's use of Cruise Terminal D pursuant to a berth schedule approved by County (and made in accordance with this Agreement and the D/E Agreement) before Carnival's requested change or amendment. The Parties acknowledge that it is in the best interest of the cruise lines and the Port to work together cooperatively concerning scheduling to maximize the use of the Port's cruise terminal(s).

4.02 **Cruise Terminal E Berthing Schedule.** Notwithstanding anything to the contrary in the D/E Agreement, with respect to Carnival's use of its Preferential Berthing Rights at Cruise Terminal E, during the Term, Carnival shall provide updated Berth Schedule(s) to the Port Director or designee no later than 18 months prior to the beginning of the 12-month cruise period covered by the then current Berth Schedule. Any berthing dates not claimed by Carnival shall be available to the County for use by any third-party cruise line, provided such dates do not extend beyond the then current Berth Schedule. Carnival shall notify the County, in writing, of any changes or amendments to the Berth Schedule not less than 12 months prior to the earliest date affected by the change to such schedule, provided that Carnival's changes or amendments shall be accepted by County as long as such changes or amendments do not create a conflict between Carnival's use of Cruise Terminal E and any third-party cruise line's use of Cruise Terminal E pursuant to a berth schedule approved by County (and made in accordance with this Agreement and the D/E Agreement) before Carnival's requested change or amendment. The Parties acknowledge that it is in the best interest of the cruise lines and the Port to work together cooperatively concerning scheduling to maximize the use of the Port's cruise terminal(s).

4.03 **Cruise Terminal F Berthing Schedule.** Notwithstanding anything to the contrary in the CTF Agreement, with respect to Carnival's use of its Preferential Berthing Rights at Cruise Terminal F, during the Term, Carnival shall provide updated Berth Schedule(s) to the Port Director or designee no later than 12 months prior to the beginning of the 6-month cruise period covered by the then current Berth Schedule. Any berthing dates not claimed by Carnival shall be available to the County for use by any third-party cruise line, provided that the berthing request falls within a 12-month period from the requested date. Carnival shall notify the County, in writing, of any changes or amendments to the Berth Schedule not less than 12 months prior to the earliest date affected by the change to such schedule, provided that Carnival's changes or amendments shall be accepted by County as long as such changes or amendments do not create a conflict between Carnival's use of Cruise Terminal F and any third-party cruise line's use of Cruise Terminal F pursuant to a berth schedule approved by County (and made in accordance with this Agreement and the D/E Agreement) before Carnival's requested change or amendment. The Parties acknowledge that it is in the best interest of the cruise lines and the Port to work together cooperatively concerning scheduling to maximize the use of the Port's cruise terminal(s).

For example, if Carnival submits schedule on October 1, 2023 for the period October 1, 2024 through March 31, 2025, the County may confirm a third-party's berthing request on October 2, 2023 for any calls falling between October 1, 2023 through September 30, 2024. If the County receives a request from a third-party for a date of December 22, 2024, the port would be required to first seek prior approval from Carnival of the date or wait until December 23, 2023, to confirm the call to the third-party.

If Carnival submits a berthing schedule on April 1, 2024 for period April 1, 2025 through September 30, 2025, the County may confirm to a third-party's berthing request on April 2, 2024 for any calls falling between April 1, 2024 through April 1, 2025. If the County receives a berthing request from a third-party for May 31, 2025, the County shall first seek prior approval from Carnival or wait until June 1, 2024 to confirm the third-party's berthing request.

4.04 **Additional Preferential Berthing Rights.** Notwithstanding anything to the contrary in the D/E Agreement, the County shall retain berthing rights at Cruise Terminal E on Sundays during the Winter 25-26 season (running from November 2025 through April 2026), except on November 30, 2025, on which Carnival shall have Preferential Berthing Rights.

4.05 **Non-Disturbance of County's Reserved Berthing Rights.** Nothing in this Agreement shall be construed to restrict any berthing rights reserved to the County under the COVID Rider or any other agreement between the County and Carnival. The County's reservation of berthing rights herein shall be additional to those previously agreed.

ARTICLE V
Additional Terms

5.01 **Cancellation of Provisioning Building Project.** The Parties acknowledge the existence of discussions regarding the design and construction of a new provisioning building for Cruise Terminals D and E (the "Provisioning Building Project"). While the County is not under a contractual obligation under any agreement (including the D/E Agreement and the CTF Agreement) to undertake the Provisioning Building Project, the Parties agree that the Provisioning Building Project shall be cancelled.

5.02 **Shore Power.** Notwithstanding anything to the contrary in the D/E Agreement or the CTF Agreement, to the extent the County establishes a fee for the recovery of costs directly incurred from the use or availability of shore power at PortMiami (including operating and maintenance costs for shore power facilities, but excluding fees for the recovery of capital expenditures on the Cruise Terminal F shore power system), the imposition on and collection from Carnival of such fee is agreed by the Parties and shall not be subject to any limitation set forth in the D/E Agreement or CTF Agreement regarding additional costs, new fees or fee increases (including as to New Fees or PortMiami Specific Charges), provided that any such fee shall be uniformly applied to all users of shore power at PortMiami, and reflects the costs directly incurred by the County for the shore power. The County will continue to consult with Carnival on the proposed fee amounts and any associated costs and provide Carnival with at least 9 months' prior written notice of the effectiveness and imposition of the Tariff fee (provided, however, that the foregoing obligation shall not be applicable in FY 2023). Notification of any Florida Power & Light ("FPL") rate changes will be passed along to Carnival upon receipt.

For any shore power enabled vessels berthing at shore power capable berths anywhere at PortMiami, Carnival shall utilize shore power. Such shore power shall be used and made available in accordance with any port-wide standards and practices then in effect. Carnival shall reimburse the County for the actual cost of electrical charges incurred by Carnival for the use of such shore power which is paid by the County.

5.03 **Shore Power Negotiation Threshold.** For the year starting on January 1, 2028, if FPL's rates for the use of shore power at PortMiami have increased by fifty percent (50%) over the year 2024, and for each year starting January 1, 2029 if FPL's rates for the use of shore power at PortMiami have increased by fifty percent (50%) over the prior year, the Parties shall meet and confer to resolve to utilize shore power at PortMiami in accordance with § 5.02 of this Agreement but Carnival is not obligated to plug in any year starting from 2028 if the FPL rates exceed the thresholds outlined prior. The Parties, in their sole discretion, may negotiate alternative arrangements regarding the use of shore power at PortMiami; provided, however, that any negotiated arrangement shall provide for the mandatory resumption of the usage of shore power during the Term of the Agreement. During such negotiations Carnival's obligations under § 5.02 shall remain in effect.

ARTICLE VI
Miscellaneous

6.01 **Applicable Law; Venue.** Carnival shall comply with all Applicable Laws in relation to its performance of obligations under this Agreement, which Applicable Laws shall include all federal, state, and local laws (including County ordinances and resolutions of general application) and any applicable deed restrictions. This Agreement shall be construed in accordance with the laws of the State of Florida, without regard to any conflict-of-laws provisions that would result in the application of the law of any other state or nation. Any dispute arising out of or related to this Agreement shall be adjudicated in a court of competent jurisdiction located within Miami-Dade County, Florida. This provision shall not apply to matters in which exclusive jurisdiction is conferred by law upon the Federal Maritime Commission. In any dispute arising out of or relating to this Agreement, each Party shall bear its own fees and costs.

6.02 **Non-Discrimination.** Carnival shall abide by all applicable federal, state, and local mandates with regard to their employment hiring practices, promotions, or use of Cruise Terminals D/E and Cruise Terminal F, or in any other respect; must provide equal access and equal opportunity in employment and services; and will not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity, gender expression, physical ability, or status as a victim of domestic violence, dating violence, or stalking, all in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Chapter 11A of the County Code.

6.03 **Authority to Bind.** 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.

6.04 **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 thereto and all such counterparts 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 ACCEPTANCE WHEREOF, Miami-Dade County and Carnival Corporation have set their respective hands as of the date and year appearing by their respective signatures.

Carnival Corporation

By: ______________________

Print: CHRISTINE DUFFY

Title: President, Carnival Cruise Line

Dated: 10-31, 2023.

Attest: ______________________

Print: Enrique Miguez

Seal:

CARNIVAL LEGAL

Miami-Dade County, Florida

By: ______________________

Print: ______________________

Title: ______________________

Dated: ______________________, 2023.

By: ______________________

Assistant County Attorney
As to Form and Legal Sufficiency

EXHIBIT 1

CT D, E & F Minimum Annual Guarantee

Fiscal Year	Minimum Annual Guarantee Passengers	Minimum Annual Guarantee Payment / Revenue	
FY 2023 (1)	1,789,041	$	38,070,792
FY 2024	2,350,000	$	51,512,000
FY 2025	2,350,000	$	53,063,000
FY 2026	2,250,000	$	52,329,923
FY 2027	2,250,000	$	53,888,121
FY 2028	2,250,000	$	55,507,014
FY 2029 (2)	2,250,000	$	57,172,075
FY 2030	2,250,000	$	58,883,787
FY 2031	2,250,000	$	60,657,650
FY 2032	2,250,000	$	62,479,180
FY 2033	2,250,000	$	64,348,905
FY 2034	2,250,000	$	66,282,373
FY 2035	2,250,000	$	68,265,144
FY 2036	750,000	$	23,437,798
FY 2037	750,000	$	24,140,932
FY 2038	750,000	$	24,865,160
FY 2039	750,000	$	25,611,115
FY 2040	750,000	$	26,379,448
FY 2041	750,000	$	27,170,832
FY 2042	750,000	$	27,985,957
FY 2043 (3)	750,000	$	28,825,535
FY 2044	750,000	$	29,690,301
FY 2045	750,000	$	30,581,010
FY 2046	750,000	$	31,498,441
FY 2047	750,000	$	32,443,394
FY 2048	750,000	$	33,416,696
FY 2049	750,000	$	34,419,197
FY 2050 (4)	750,000	$	35,451,773
FY 2051	750,000	$	36,515,326
FY 2052	750,000	$	37,610,785
FY 2053	750,000	$	38,739,109
FY 2054	750,000	$	39,901,282
FY 2055	750,000	$	41,098,321
FY 2056	750,000	$	42,331,270

Assistant County Attorney
Miami-Dade County
(Approved as to Form and Legal Sufficiency)

(1) Minimum Annual Guarantee (2,250,000) for FY 2023 prorated based on expiration of Covid Recovery Rider.
(2) Should Carnival exercise its optional 7-year Extension Term for CT D/E Agreement. If CT D/E Agreement is not renewed, MAG reverts to 750,000.
(3) Should Carnival exercise its optional 7-year Extension No. 1 for CT F Agreement
(4) Should Carnival exercise its optional 7-year Extension No. 2 for CT F Agreement

Exhibit reflects combined revenue guarantees from Cruise Terminals D, E, and F. Total Minimum Annual Guaranty Payment serves as Carnival annual revenue commitment under both D/E and CT-F Agreements.

The MAG shown in this Exhibit reflects an annual increase of 3% each Fiscal Year. Notwithstanding the foregoing, Carnival's MAG will increase only to the extent the County increases Carnival's Unitary Fee for a particular Fiscal Year.

Diaz, Nelson (COC)

From:	Owens, Debra D. (Seaport)
Sent:	Thursday, May 9, 2024 12:16 PM
To:	Cave, Linda (COC)
Cc:	Diaz, Nelson (COC); Martinez, Analeen (Seaport)
Subject:	Requesting Replacement Page
Attachments:	R-31-24.pdf

Good afternoon Linda, attached is a copy of the first page of the Board Memo (R-31-24) along with the last page (exhibit) of the Board document we are requesting to be replaced with the one signed by the County Attorney for legal sufficiency.

Please let me know if you have any questions.

Thanks

Debra D. Owens
Director, Government Affairs & International Relations
PortMiami
1015 North America Way, 2nd Floor
Miami, FL 33132
Debra.Owens@miamidade.gov
305-960-5456 office
786-255-3704 cell