

# Memorandum



**Date:** September 5, 2018

Agenda Item No. 8(J)(2)

**To:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

**Subject:** Resolution Approving and Authorizing Execution of Amendment No. 2 to the Preferential Berthing Agreement Between Miami-Dade County and Magical Cruise Company Ltd d.b.a. Disney Cruise Line and a Memorandum of Understanding

## **Recommendation**

It is recommended the Board of County Commissioners (Board) approve the accompanying resolution approving and authorizing the execution of Amendment No. 2 ("Second Amendment") to the Preferential Berthing Agreement between Miami-Dade County ("County") and Magical Cruise Company d.b.a. Disney Cruise Line ("Disney") and a Memorandum of Understanding ("MOU").

## **Scope**

The Port is located within District 5, which is represented by Commissioner Eileen Higgins. The impact of this agenda item is countywide, as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

## **Delegated Authority**

The resolution authorizes the County Mayor or County Mayor's designee to execute the Amended and Restated Cruise Terminal Agreement on behalf of Miami-Dade County and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, berthing requests, and/or other County rights conferred in the Agreement.

## **Fiscal Impact/Funding Source**

This item accomplishes two objectives: (1) an Amendment No. 2 to the Preferential Berthing Agreement with changes to preferential berthing rights, minimum annual guarantees and term, and (2) outlines a Memorandum of Understanding (MOU) for the construction of a new cruise terminal on the south side of the port for Disney.

1. This Agreement provides the County with a continuation of Disney's Minimum Annual Guarantee of 100,000 Passenger Movements during Fiscal Year 2018. However, Disney agrees to increase its Minimum Annual Guarantee to the County to 150,000 Passenger Movements each Fiscal Year, commencing Fiscal Year 2019 through Fiscal Year 2022. Additionally, Disney is expecting to increase its passenger volumes by replacing its current seasonal service with a year-round 5/5/4 rotation onboard a large vessel (minimum 3,500 passengers), commencing January 2023, increasing its Minimum Annual Guarantee to 360,000 Passenger Movements during Fiscal Year 2023 through the Term. Starting Fiscal Year 2019, Disney may accrue Passenger Surplus Movements to offset shortfalls in its Minimum Annual Guarantee, similar to other cruise line agreements, as further detailed in the Background Section of this memorandum.

Commencing Fiscal Year 2019, in addition to guaranteeing Minimum Annual Wharfage revenue, Disney also guarantees Minimum Annual Dockage revenue based on the then-applicable dockage Tariff rate and 80 percent of Disney's anticipated vessel calls in a given Fiscal Year. This represents an additional guarantee of approximately \$890,000 in Fiscal Year 2019.

The Agreement is expected to generate \$2.7 million in gross revenues during Fiscal Year 2019, based on Minimum Annual Guarantees and shall increase by three percent each year through Fiscal Year 2022. Upon the start of the year-round 5/5/4 service, the County is expected to generate \$7.2 million in FY 2023.

The County shall continue to provide Disney a share of its parking revenue, expected to be approximately \$465,000 during Fiscal Year 2019, as provided for with other cruise line agreements.

2. The MOU between the Parties outlines the intention to increase Disney's berthing capacity at PortMiami by offering it a first right to enter into negotiation for the potential development of a new Terminal Project located on the south side of the Port, to the east of existing Terminal J. Such facility will allow the Port to expand its cruise business by allowing Disney to homeport the large Disney vessels capable of carrying 3,500+ passengers. The project is further explained in the Background section of this memorandum.

Disney is current on all its financial obligations to the Port and their account is in good standing.

#### **Track Record/Monitor**

The Seaport Department staff members responsible for monitoring the Second Amendment are Juan Kuryla, Port Director and CEO; Hydi Webb, Deputy Director; and Basil Binns II, Assistant Director.

#### **Background**

Magical Cruise Company Ltd., d.b.a. Disney Cruise Line, is a family-inspired vacation company. The cruise line, headquartered in London, United Kingdom, currently operates a fleet of four vessels with another three vessels on schedule for delivery by 2023.

On November 20, 2012, the Board approved Resolution No. R-987-12, which authorized the execution of a Preferential Berthing Agreement with Disney. The agreement had a two-year term, with two one-year renewal options. The Agreement has been profitable for both parties as it has provided the Port with guaranteed passenger volumes and revenues in exchange for preferential berthing rights at Terminal F and a parking revenue incentive for Disney.

On December 1, 2015, the Board approved Amendment No. 1 via Resolution No. R-1080-15, which authorized the extension of the base agreement by two years, with a one-year renewal option. The Amendment, which will expire September 30, 2018, guarantees preferential berthing rights at Terminal F and a parking revenue incentive in exchange for guaranteed passenger volumes and revenues.

Due to its success and an aggressive new-build program, Disney continues to seek growth at PortMiami. With three new vessels on order through 2023, the cruise line desires to homeport a large vessel year-round at PortMiami, commencing January 2023, on a 5/5/4 rotation, and a second large vessel starting seasonally January 2024, on a 3/4 rotation.

Responding to the opportunity to grow its presence in Miami, this proposed Amendment No. 2 to the Agreement is respectfully recommended for approval. Under the proposed terms, Disney commits the following to the County:

- Passenger Guarantees will remain at a minimum of 100,000 Passengers Movements during Fiscal Year 2018, and increase to 150,000 minimum Passenger Movements for every Fiscal Year from Fiscal Year 2019 to Fiscal Year 2022. Upon the start of its new year-round service, the Minimum Annual Guarantee shall increase to 360,000 Passenger Movements during Fiscal Year 2023 through the Term (April 30, 2024).
- Commencing Fiscal Year 2019, Disney shall guarantee Minimum Annual Dockage revenue calculated based on the then-existing dockage Tariff rate times the Disney vessel's gross registered tonnage, times the anticipated annual vessel calls, times .80 (80 percent "Minimum Annual Dockage Guarantee").

In order for the Port to receive this pledge, Disney will receive the following incentives:

- Disney shall have year-round preferential berthing rights at Terminal F on Sundays during Fiscal Years 2018 and 2019, and rights at New Terminal C on Saturdays, commencing Fiscal Year 2020 through the Term.
  - The New Terminal B project, initially slated to be complete on November 9, 2019 has been delayed (currently projected for completion on February 10, 2018). Disney agrees to share use of the existing terminals B and C and the facilities that support their operations, berthing its vessel at existing Terminal C, (with the use of only one Port passenger boarding bridge) until New Terminal B is complete.
- Disney may accrue and carry forward up to 150,000 Passenger Moves starting Fiscal Year 2019 to offset shortfalls in its Minimum Annual Guarantee. Disney shall be limited to using a maximum of 75,000 Passenger Movements in any Fiscal Year and within two consecutive Fiscal Years.
- Disney shall continue to receive a parking incentive based on the proportion of Disney multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port during the Term. This incentive is similar to other cruise line agreements with the County.

In addition to this Amendment to the Preferential Berthing Rights Agreement, the Parties have agreed to enter into an MOU, attached as Exhibit B to the Amendment. Under the MOU, Disney will have the first right to enter into negotiations with PortMiami for the purpose of agreeing upon a binding development and preferential use agreement (subject to Board approval before it becomes effective) with respect to a potential new cruise terminal on the south side of PortMiami, east of the existing Terminal J. In addition, the MOU also grants Disney the first right to negotiate preferential berthing rights for Sundays at Terminal J, commencing in 2024.

Such binding agreement would include all specifics of the project (i.e., financing commitments, (including the implementation of a passenger capital recovery surcharge) and construction deadlines, with a goal of commencing vessel operations by December 2023) and would also entail amendment of the existing Terminal Usage Agreement to provide for, among other

things, modification of Disney's Minimum Annual Guarantees, Preferential Berthing Rights, Marketing Incentives, and financing commitments.

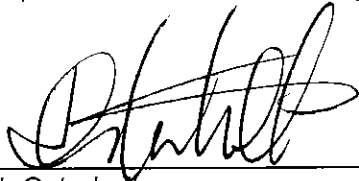
Disney intends for the prospective new terminal to serve as a homeport to its large Disney vessels capable of carrying 3,500+ passengers. Construction would include a cruise ship pier complex capable of accommodating vessels up to 1,150 feet in length in a homeport operational capacity, including a rehabilitated bulkhead and apron, terminal complex, provision staging and loading areas, bus and taxi staging areas, and a parking garage of a suitable size.

Before construction of Disney's proposed terminal is possible, it will be necessary to successfully complete the previously announced widening of the ship channel and turning basin on the south side of the Port for cargo and cruise usage, and the acquisition of rights to the necessary cargo land, currently under lease to Seaboard Marine. If construction of the prospective new terminal is not viable or unsuitable, the parties may explore alternative Port berthing options on the north side (available berths or terminal sites) to the extent available and not precluded by or inconsistent with prior Port contracts or oral commitments.

Disney's primary negotiation rights pursuant to the MOU will last 18 months from the date of the MOU's execution. Such rights will terminate after 18 months, unless the parties reach a written agreement to continue their negotiations, or unless the parties agree to an earlier termination date, agree on and secure the requisite approvals (including Board approval) for a binding agreement, or if Disney notifies the County that its fleet deployment plans will obviate the need for the new terminal.

Pursuant to the MOU, the County commits to negotiating in good faith with Disney regarding the aforementioned matters. This success of the proposed project is extremely important to the Port as the addition of a new cruise terminal will allow the Port to welcome more vessels and grow its current cruise business. It is also recommended that the Board of County Commissioners waive the requirements of Resolution No. R-130-06 requiring execution of the agreement by all parties, prior to the Board's approval.

The effective date of this Amendment shall be after approval of this Amendment No. 2 by the Miami-Dade County Board of County Commissioners and the expiration of any applicable Mayoral Veto period. The Term of the Agreement is amended to April 30, 2024.



---

Jack Osterholt  
Deputy Mayor




# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** September 5, 2018

**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)  
9-5-18

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AMENDMENT NO. 2 TO THE PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAGICAL CRUISE COMPANY LTD. D/B/A DISNEY CRUISE LINE (DISNEY) TO EXTEND THE TERM OF THE TERMINAL BERTHING AGREEMENT, INCREASE THE MINIMUM ANNUAL GUARANTEES, AMEND THE TERMINAL USAGE RIGHTS AND THE PARKING INCENTIVE, AND ESTABLISH PASSENGER SURPLUS MOVEMENTS AND A MINIMUM ANNUAL DOCKAGE GUARANTEE ALL WITH AN ESTIMATED FISCAL IMPACT OF \$26,400,000.00 IN ADDITIONAL PAYMENTS TO THE COUNTY; APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND DISNEY FOR PRIMARY NEGOTIATION RIGHTS FOR A TERM OF 18 MONTHS TO NEGOTIATE THE CONSTRUCTION OF A NEW CRUISE FACILITY ON THE SOUTH SIDE OF THE PORT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE EXECUTE SAME AND EXERCISE ALL RIGHTS CONTAINED THEREIN; AND APPROVING WAIVER OF RESOLUTION NO. 130-06

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. 2 ("Amendment No. 2") for and on behalf of Miami-Dade County, in substantially the form attached and made part hereof, to the Preferential Berthing Agreement between Miami-Dade County ("County") and Magical Cruise Company Ltd. d/b/a Disney Cruise Line ("Disney") to extend the term of the terminal berthing agreement, increase the minimum annual guarantees, amend the terminal usage rights and the parking

6

incentive, and establish passenger surplus movements and a minimum annual dockage guarantee, all with an estimated fiscal impact of \$26,400,000.00 in additional payments to the County.

**Section 2.** Approves the Memorandum of Understanding between the County and Disney, attached as Exhibit B to attached Amendment No. 2, providing for primary negotiation rights for a term of 18 months to negotiate the construction of a new cruise facility on the south side of the Port.

**Section 3.** Authorizes the County Mayor or County Mayor's designee to execute the documents approved pursuant to Sections 1 and 2 hereof and to exercise all rights contained therein.

**Section 4.** Approves waiver of provisions of Resolution No. R-130-06 requiring execution by all parties of the agreement prior to approval by this Board for the reasons stated in the accompanying County Mayor's memorandum.

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

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Daniella Levine Cava	Jose "Pepe" Diaz
Sally A. Heyman	Eileen Higgins
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared this resolution duly passed and adopted this 5<sup>th</sup> day of September, 2018. 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: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Miguel A. Gonzalez





**Amendment No. 2 to the Preferential Berthing Agreement  
Between Miami-Dade County and Magical Cruise Company Ltd.**

THIS AMENDMENT No. 2 (“Amendment No. 2”) to the November 20, 2012 Preferential Berthing 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 “County”), as amended, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, Disney and the County are hereinafter collectively referred to as “the Parties.”

WHEREAS, by Resolution No. R-987-12 on November 20, 2012, the Miami-Dade County Board of County Commissioners approved the Terminal Berthing Agreement between Miami-Dade County and Magical Cruise Company Ltd d.b.a. Disney Cruise Line (the “Original Agreement”); and

WHEREAS, by Resolution No. R-1080-15, the Original Agreement was amended by Amendment No. 1 dated December 1, 2015 (“Amendment No. 1”). The Original Agreement as amended by Amendment No. 1 shall be referred to as the “Agreement”; and

WHEREAS, the Agreement is set to expire on October 1, 2018 with a one-year renewal option; and

WHEREAS, Disney agrees to increase its Minimum Annual Guarantees to the County commencing Fiscal Year 2019/20 as further described below; and

WHEREAS, the Parties wish to amend and extend the term of the Agreement by this Amendment No. 2, all as more particularly set forth below,

NOW, THEREFORE, and in consideration of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. This Amendment shall be effective upon the effective date of the resolution of the Board of County Commissioners approving its execution (the “Amendment Number 2 Effective Date”).
2. Section 4 of the Agreement is amended such that the Term of the Agreement shall expire at 12:01 a.m. on April 30, 2024. Should the Parties not reach a mutual agreement under the terms of the draft Memorandum of Understanding (MOU) attached to this Amendment No. 2 as Exhibit B-1, the Parties shall have the mutual right to terminate this Agreement upon two year’s prior notice to the County.
3. Section 2 of the Agreement shall be amended to add the following definition:

“Passenger Surplus Movements” means the number of Passenger Movements generated by Disney in any given Fiscal Year which exceeds the minimum number of Passenger Movements required to satisfy the total Minimum Annual Guarantee of Disney set forth in

Section 3(c)(i) of the Agreement, which may be used to offset Shortfalls in subsequent years subject to terms and limitations of Section 3 below.

4. Section 3(a)(i) through (ii) of the Agreement relating to Terminal Use shall be deleted and, in lieu thereof, shall be added the following:

(a) Terminal Use and Security.

- (i) The County hereby grants to Disney Berthing Rights to continue utilizing Terminal F on Sundays for Disney vessels for the current Fiscal Year 2017/18 and upcoming Fiscal Year 2018/19. Commencing upon New Terminal B being completed and becoming operational, Disney shall have preferential berthing rights at New Terminal C (combined current terminals B&C) on Saturdays through April 30, 2024. Prior to New Terminal B being completed and becoming operational, Disney shall have the conditioned berthing right at existing Terminal C (not combined with existing Terminal B) on Saturdays commencing November 2019 and terminating upon completion of New Terminal B, subject to the County first obtaining an executed and fully effective amendment to its Amended and Restated Cruise Terminal Agreement with NCL (Bahamas) Ltd. (NCLB) in which NCLB (1) unconditionally relinquishes its preferential berthing rights to existing Terminal B as of November 8, 2019 and (2) otherwise agrees to shared operations of existing Terminals B and C with other lines prior to the completion of New Terminal B. In conjunction of the foregoing, in the event the aforementioned conditions are met, Disney agrees to a shared operation of the existing Terminals B and C facilities (ie. parking garage intermodal, and provisioning facilities) as reasonably determined by the Port, and to have access to one passenger boarding bridge while at existing Terminal C prior to New Terminal B being completed and becoming fully operational.

The Disney Berth Schedule, "Exhibit A", sets forth the dates when Disney intends to berth its ships at PortMiami during Fiscal Year 2018/19 and Fiscal Year 2019/20. Disney shall notify the County, in writing, of any changes to the Disney Terminal Berth Schedule no less than eighteen (18) months prior to the earliest date affected by the change to such schedule. In addition, Disney shall update its 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 MOU outlines the future intentions of both parties to accommodate Disney's vessels at the Port after April 30, 2024, pursuant to a not yet negotiated future Development and Preferential Berthing Agreement. The Port shall also have the right to schedule Disney at another cruise terminal,

provided that such use of that terminal will not interfere with preferential berthing rights of another cruise line and further provided that such other terminal is approved by Disney.

5. The last sentence of the first paragraph of Section 3(b)(i) of the Agreement relating to passenger wharfage shall be amended to read as follows:

On the Amendment No. 2 Effective Date, such rate for FY 2018/19 shall be \$12.39 per each passenger embarkation and each passenger debarkation.

6. The last sentence of the first paragraph of Section 3(b)(ii) of the Agreement relating to dockage shall be amended to read as follows:

On the Amendment No. 2 Effective Date, such rate for FY 2018/19 shall be \$0.382 per gross registered ton.

7. Section 3(c) of the Agreement shall be deleted and, in lieu thereof, shall be added the following:

(c) Disney Minimum Annual Guarantee and Homeport Commitment

- (i) Minimum Annual Guarantee: During FY 2017/18, Disney shall continue to have a Minimum Annual Guarantee of no less than 100,000 Passenger Movements through the Port each Fiscal Year. Commencing on FY 2018/19 and continuing through FY 2021/22, Disney shall have a Minimum Annual Guarantee of no less than 150,000 Passenger Movements for each Fiscal Year. Commencing FY 2022/23 and continuing through the remaining Term of this Agreement, Disney shall increase its Minimum Annual Guarantee to no less than 360,000 Passenger Movements. As sole remedy for failure to meet its Minimum Annual Guarantee, Disney 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 that given Fiscal Year.
- (ii) Passenger Surplus Movements: Disney shall have the right to accrue Passenger Surplus Movements commencing Fiscal Year 2018/19 through the remainder of the Term. Such Passenger Surplus Movements may be applied in subsequent years through the remainder of the Term to offset shortfalls in Disney's Minimum Annual Guarantee. The maximum amount of Passenger Surplus Movements that Disney may accrue and carry forward at any time is 150,000 Passenger Moves. Disney shall be limited to using a maximum of 75,000 Passenger Movements for its Minimum Annual Guarantee in a given Fiscal Year and within two consecutive Fiscal Years.

- (iii) Minimum Annual Dockage Guarantee: Commencing Fiscal Year 2018/19, Disney shall guarantee the County minimum annual dockage (“Minimum Annual Dockage Guarantee”) calculated based on of the product of the following factors: the then-existing dockage Tariff rate (subject to the annual rate escalation cap set forth in Section 3(b)(ii)), times the Disney vessel’s gross registered tonnage (“GRT”), times eighty percent (80%) of the anticipated annual vessel calls set forth in Exhibit A and any subsequent deployment schedules provided by Disney to the County. For example, if the applicable Tariff rate times GRT is \$50,000, and the anticipated annual vessel calls was 100, then the Minimum Annual Dockage Guarantee would be \$4,000,000 (\$50,000 times 80% of 100 calls). Should Disney fail to meet the Minimum Annual Dockage Guarantee in any Fiscal Year during the Term or any approved renewal Term, as a sole remedy for such failure, Disney shall pay the County for any Minimum Annual Dockage Guarantee deficiency (hereafter, “Dockage Shortfall Payment”) within thirty (30) calendar days of the end of the applicable Fiscal Year in which the Minimum Annual Dockage Guarantee is not met.
8. Section 3(d)(ii) of the Agreement related to Parking Revenues shall be deleted and, in lieu thereof, shall be added the following:
- (ii) Disney’s Parking Incentive shall be determined based on the proportion of Disney multi-day cruise embarkations at the Port to total embarkations at the Port. Embarkations associated with port-of-call vessels shall not be included in the calculation relating to Parking Revenues, 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 Disney’s embarkations are ten percent (10%) of the Port’s total embarkations then Disney will receive ten percent (10%) of Parking Revenues. The Port shall remit Parking Revenues to Disney within sixty (60) days of the close of each fiscal quarter, the first quarter close after the Effective Date of this Second Amendment being December 31, 2018.
9. All the terms, conditions, and warranties contained in the Agreement, which are not amended in this Amendment No. 2 are hereby reaffirmed and shall continue in full force and effect.
10. The WHEREAS clauses set forth above are incorporated into the body of this Amendment No. 2 as if fully set forth herein.
11. This Amendment No. 2 shall be governed by Florida Law.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 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

MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_

Clerk of the Board

\_\_\_\_\_. Approved as to form and legal sufficiency

**Exhibit A**  
**Disney Berthing Schedule**

**FISCAL YEAR 2018-19 (TERMINAL F)**

**DECEMBER 2018**

Wednesday, Dec 5  
Sunday, Dec 9  
Friday, Dec 14  
Wednesday, Dec 19  
Sunday, Dec 23  
Friday, Dec 28

**JANUARY 2019**

Wednesday, Jan 2  
Sunday, Jan 6  
Friday, Jan 11  
Wednesday, Jan 16  
Sunday, Jan 20  
Friday, Jan 25  
Wednesday, Jan 30

**FEBRUARY 2019**

Sunday, Feb 3  
Friday, Feb 8  
Wednesday, Feb 13  
Sunday, Feb 17  
Friday, Feb 22  
Wednesday, Feb 27

**MARCH 2019**

Sunday, Mar 3  
Friday, Mar 8  
Wednesday, Mar 13  
Sunday, Mar 17  
Friday, Mar 22  
Wednesday, Mar 27  
Sunday, Mar 31

**APRIL 2019**

Friday, Apr 5  
Wednesday, Apr 10  
Sunday, Apr 14  
Friday, Apr 19  
Wednesday, Apr 24  
Sunday, Apr 28

**MAY 2019**

Friday, May 3  
Wednesday, May 8  
Sunday, May 12

**\*FISCAL YEAR 2019-20**

**NOVEMBER 2019**

Wednesday, Nov 20 - Terminal F  
Saturday, Nov 23 – Terminal C  
Friday, Nov 29 - Terminal F

**DECEMBER 2019**

Monday, Dec 2 - Terminal F  
Saturday, Dec 7 – Terminal C  
Thursday, Dec 12 - Terminal F  
Monday, Dec 16 – Terminal C  
Saturday, Dec 21 – Terminal C  
Thursday, Dec 26 - Terminal F  
Saturday, Dec 30 – Terminal C

**JANUARY 2020**

Saturday, Jan 4 – Terminal C  
Thursday, Jan 9 - Terminal F  
Tuesday, Jan 14 - Terminal F  
Saturday, Jan 18 – Terminal C  
Thursday, Jan 23 - Terminal F

Monday, Jan 27 - Terminal G

**FEBRUARY 2020**

Saturday, Feb 1 – Terminal C  
Thursday, Feb 6 - Terminal F  
Monday, Feb 10 – Terminal C  
Saturday, Feb 15 – Terminal C  
Thursday, Feb 20 - Terminal F  
Friday, Feb 24 – Terminal C  
Wednesday, Feb 29 – Terminal C

**MARCH 2020**

Thursday, Mar 5 - Terminal F  
Monday, Mar 9 – Terminal C  
Saturday, Mar 14 – Terminal C  
Thursday, Mar 19 – Terminal B / E  
Monday, Mar 23 – Terminal C  
Saturday, Mar 28 – Terminal C

**APRIL 2020**

Thursday, Apr 2 – Terminal B/E/G  
Monday, Apr 6 – Terminal C  
Saturday, Apr 11 – Terminal C  
Thursday, Apr 16 – Terminal B / E  
Monday, Apr 20 – Terminal C  
Saturday, Apr 25 – Terminal C  
Thursday, Apr 30 – Terminal B/E/G

**MAY 2020**

Monday, May 4 - Terminal G  
Friday, May 8 – Terminal E/F/G  
Monday, May 11 – Terminal E/G

\*Due to a delay in the proposed completion date for New Cruise Terminal B, the County and Disney are discussing the option of all Disney ships calling at existing Terminal C, sharing use of facilities that support its operations (with the use of only one Port passenger boarding bridge), from November 2019 through February 2020, as an alternative to interchanging terminals during the FY 2019-20 season.

14

**EXHIBIT B-1**

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is made as of the \_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (the “County”), and **Magical Cruise Company, Ltd, d.b.a. Disney Cruise Line** (“Disney”). The County and Disney shall each be hereinafter referred to as a “Party” and collectively as the “Parties”.

**RECITALS**

**WHEREAS**, the County owns certain land located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (“Port” or “PortMiami”) is located, which the County operates through the Miami-Dade Seaport Department, a department of the County; and

**WHEREAS**, Disney is a cruise line currently operating 4 ships, with plans of growing its fleet through the addition of 3 new vessels, which are on order through 2023; and

**WHEREAS**, Disney is currently homeporting one “Magic”-class vessel at PortMiami seasonally and would like to expand its presence in Miami with a year-round large vessel (minimum of 3,500 passengers) beginning in January, 2023 and an additional seasonal large vessel beginning in January, 2024; and

**WHEREAS**, Disney desires to increase its berthing capacity at PortMiami by attaining future berthing rights at a potential new cruise terminal located on the south side of the Port, to the east of existing Terminal J, as depicted in the proposed site plan attached and made a part of this MOU as Exhibit B-2 (the “Project”); and

**WHEREAS**, PortMiami wishes to attempt to allow for the growth of Disney, its valued business partner, within the Port by offering it a first right to enter into negotiations with the County with respect to the potential development of the Project, subject to the terms and conditions more particularly set forth below; and

**WHEREAS**, in the event development of the Project is later deemed by both Parties to be non-viable or unsuitable, then the Port and Disney wish to explore alternative Port berthing options to the extent available and not precluded by or inconsistent with prior Port commitments; and

**WHEREAS**, on November 20, 2012, via Resolution No. R-987-12, the Miami-Dade County Board of County Commissioners (the “Board”) approved a Terminal Berthing Agreement with Disney, as later amended with Amendment No. 1 dated December 1, 2015 via Resolution No. R-1080-15; and

**WHEREAS**, the Parties seek to amend the Disney Preferential Berthing Agreement to, among other things, incorporate the terms of this MOU; and

**WHEREAS**, the Parties desire to enter into this MOU, providing a framework and negotiation rights to Disney for negotiations surrounding the Expansion Possibilities,

**NOW THEREFORE**, the understanding of the Parties is as follows:

## EXHIBIT B-1

1. **Primary Negotiation Rights Regarding Expansion Possibilities on the south side of the Port.** In order to foster the possibility that Disney may use the Port to serve as a homeport for additional and large Disney vessels capable of carrying 3,500+ passengers, Disney shall have Primary Negotiation Rights with respect to the potential development of the Project. As used in this MOU, "Primary Negotiation Rights" shall mean the first right to enter into negotiations for the purpose of reaching agreement upon a binding development and preferential use agreement with respect to the Project, as well as the first right to negotiate preferential berthing rights for Sundays at Terminal J commencing in 2024. The Primary Negotiation Rights shall commence on the Effective date of this MOU and terminate eighteen (18) months thereafter, subject to the provisions of § 4 below (the "Primary Negotiations Rights Window"), during which time the County agrees not to enter into new contracts or other arrangements committing the Port areas that are the subject to the Primary Negotiation Rights for any new uses or purposes that are inconsistent with their potential use by Disney, commencing in 2024. During the Primary Negotiations Rights Window the Parties shall negotiate in good faith with the objective of agreeing upon a mutually acceptable Project development and preferential berthing agreement, which agreement, if reached, shall be subject to the prior approval of both Parties, which, as to the County, shall require approval by a duly approved and effective resolution of its Board of County Commissioners (the "Definitive Agreement").

2. **Project Description.** With respect to that potential Project, the Parties anticipate that any future Project development and preferential use agreement would be premised, among other things, on the following general framework, which upon a successful conclusion of Disney's Primary Negotiation Rights would be memorialized in and subject to a binding Definitive Agreement.

(a) The Project Site, which is identified in Exhibit B-2 attached hereto, is intended to be located east of Terminal J. The Project is intended to consist of a cruise ship pier and terminal complex capable of accommodating vessels of up to 1,150 feet in a homeport operational capacity, including a rehabilitated bulkhead and apron, terminal complex, provision staging and loading areas, bus and taxi staging areas, and a parking garage suitable for Disney's vessels, subject to, and to be more particularly described in, the potential Definitive Agreement. The Project is also intended to accommodate an efficient vehicular traffic flow to the site.

(b) Notwithstanding and prevailing over any contrary term or implication set forth in this MOU, development of the Project Site for this Project is expressly conditioned on the County's ability to successfully complete the previously announced widening of the ship channel and turning basin on the south side of the Port for cargo and cruise usage and acquire the necessary cargo land currently under lease to Seaboard Marine, which is currently part of the Project Site, both on terms acceptable to the County and approved by its Board of County Commissioners.

(c) The Parties shall agree on Project details, including financial commitments (which may include a passenger capital recovery surcharge and a minimum Disney annual revenue guarantee(s)), construction schedule, and substantial completion dates, with the understanding that any agreement would provide that the Parties shall use commercially reasonable efforts to complete the Project prior to new vessel operations commencing in December 2023.



## EXHIBIT B-1

(d). The Parties shall enter into the Definitive Agreement between the County and Disney to extend the term, increase Disney's Minimum Annual Guarantees and Preferential Berthing Rights at their current terminals, and take such other action as the parties may reasonably contemplate to provide for the financing and mutual benefits for the transaction contemplated hereby, and negotiation of a potential marketing incentive and associated conditions.

3. **Exploration of Other Berthing Possibilities.** In the event the contemplated Project or associated Definitive Agreement cannot be achieved or implemented due to legal issues, navigation issues, land availability issues, or any other impediments, the parties will attempt in good faith to explore alternative viable Port berthing options on the north side (available berths or terminal sites) to the extent available and not precluded by or inconsistent with prior Port contracts or oral commitments. To the extent consideration and/or negotiation of other alternative berthing options results in a mutually acceptable development and/or preferential berthing agreement, such agreement shall be reduced to writing and shall be subject to the approval of the governing bodies of both Parties, and, as to the County, shall require prior approval via a duly approved and effective resolution of its Board of County Commissioners.

4. **Termination.** This MOU shall be effective from the Effective Date until any of the following occurs:

- (a) Execution and delivery of the binding Definitive Agreement, which may take the form of a New Amended and Restated Disney Agreement or an equivalent amendment of the existing Disney Terminal Agreement, upon the successful conclusion of negotiations as provided in this MOU; or
- (b) Mutual agreement of the Parties to terminate this MOU;
- (c) Notification by Disney to the County that Disney has deployment plans for its fleet that would reduce or eliminate Disney's need to occupy the Port areas that are the subject of the Expansion Possibilities; or
- (d) Eighteen (18) months from the Effective Date of this MOU, unless the Port Director and Disney mutually agree in writing to extend negotiations beyond the 18-month deadline termination of the MOU.

Upon occurrence of any of the conditions above, unless extended as provided in § 3(d), this MOU shall terminate without the necessity of further action or notice by either Party.

5. **Effect of this MOU.** The Parties agree to negotiate in good faith within the Project Primary Negotiation Rights Window to achieve a mutually acceptable and approved Definitive Agreement. A successful conclusion of negotiations pursuant to this MOU shall be subject to and require a binding Definitive Agreement, which, if reached, shall, among other things, comply with all applicable laws, all applicable deed and land-use restrictions, all applicable zoning requirements and approvals, and all existing and applicable County bond ordinances and associated restrictions.

**EXHIBIT B-1**

6. **Miscellaneous.** This MOU shall be governed by the laws of the State of Florida (without giving effect to principles of conflicts of laws which could have the effect of causing another territory's or state's law to be applicable). Venue for any suit or action to construe or enforce any term or provision of this MOU shall lie exclusively in Miami-Dade County, Florida. This MOU may be executed in multiple counterparts all of which taken together shall constitute one executed original. Signatures to this MOU may be delivered via facsimile transmission or via emailed .pdf file. Signatures delivered via either such method shall be treated as original signatures.

[Signature page to follow]

EXHIBIT B-1

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date written below.

Signed, sealed and delivered  
in the presence of:

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

By: \_\_\_\_\_  
Carlos A. Gimenez  
County Mayor

Approved as to legal form and sufficiency

ATTEST:  
CLERK OF THE BOARD

\_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Deputy Clerk

Signed, sealed and delivered

Magical Cruise Company, Ltd

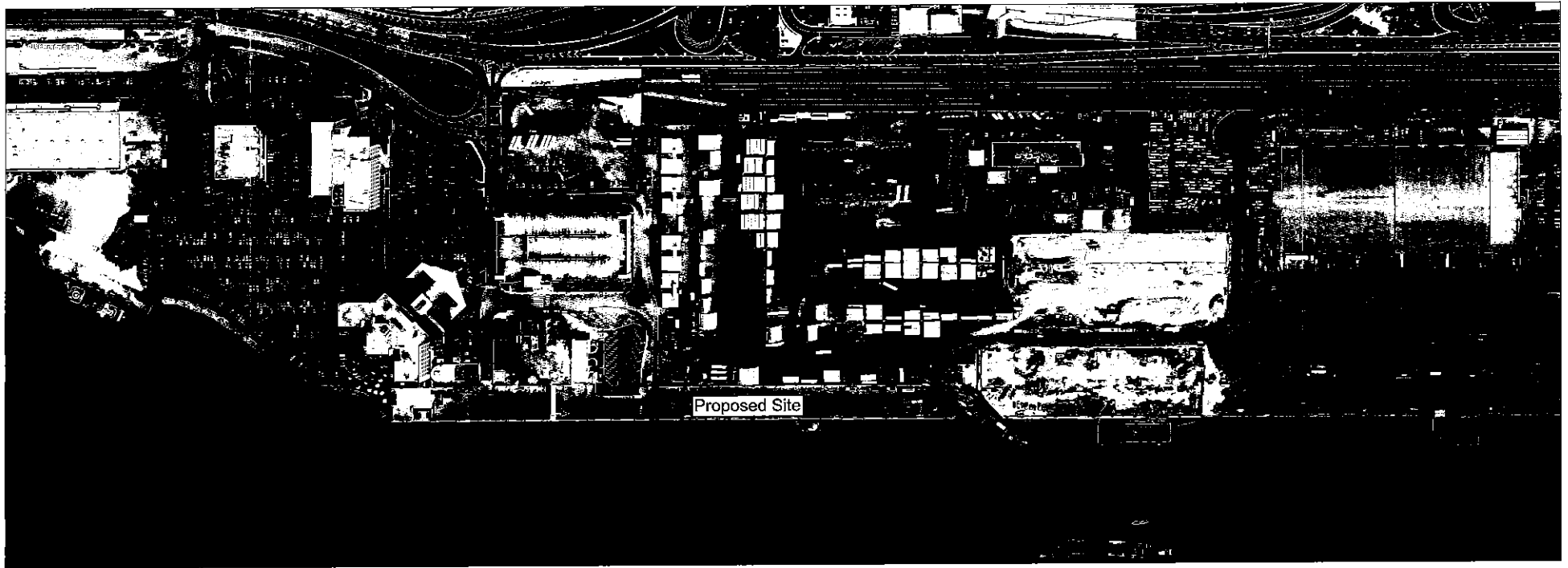
ATTEST:

By: J. Valle  
Name: JEFF VAHLE  
Title: PRESIDENT DSE

By: R. S. Dana  
R. S. DANA

## EXHIBIT B-2

*20*



\*The proposed site is a general site location to be studied and negotiated by the parties.