FIRST AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND ROYAL CARIBBEAN CRUISES LTD. FOR CONSTRUCTION AGENCY SERVICES FOR CRUISE PASSENGER TERMINAL 25 IMPROVEMENTS AT PORT EVERGLADES

This First Amendment to Agreement for Construction Agency Services for Cruise Passenger Terminal 25 Improvements at Port Everglades ("First Amendment") is entered into by and between Broward County, a political subdivision of the state of Florida, hereinafter referred to as "County," and Royal Caribbean Cruises Ltd., a Liberian corporation authorized to transact business in the state of Florida, hereinafter referred to as "RCL" (the County and RCL shall be collectively referred to as the "Parties").

RECITALS

A. County owns and operates Port Everglades, a deepwater port and appurtenant facilities in Broward County, Florida.

B. County and RCL entered into a Port Everglades Passenger Cruise Terminal and Berth User Agreement, dated June 6, 2017 (the "Berthing Agreement").

C. In order to induce RCL to home port a minimum of one RCL Edge Class cruise ship ("Edge Class Ships") or equivalent at Port Everglades, County agreed to pay for the design, expansion, and construction of improvements to Port Terminal 25 to accommodate Edge Class Ships (the "Project").

D. County and RCL have entered into that certain Construction Agency Services Agreement, dated June 6, 2017 (the "Original Agreement"), to provide for construction agency services for the Project in which RCL is designated to act as the Construction Agent for County.

E. RCL and Moss & Associates, LLC (the "Contractor" or "Construction Manager" or "CMR"), entered into a Construction Agreement, dated November 15, 2017, as amended by that First Amendment to Construction Agreement, dated February 1, 2018 (collectively referred to as the "Construction Agreement," "Construction Management Agreement," or "CMRA"), to engage Contractor for the Project.

F. County and RCL acknowledge that the Project Price and the Project Budget as defined in the Original Agreement have increased by Six Million Nine Hundred Eighty-nine Thousand Two Hundred Thirty Dollars ($6,989,230) due to costs associated with the completion of the final design and awarding of subcontractor contracts by Contractor, additional requirements for operational space and information technology by U.S. Customs and Border Protection, potential increases in construction costs for the mobile elevated gangways, the addition of a conveyor system to facilitate embarking passenger baggage screening, and exterior MediaMesh to allow for variable displays of graphics depending on the terminal use (the "Increased Costs").
G. County and RCL have agreed to amend the Berthing Agreement to provide for a capital cost recovery charge in order for RCL to reimburse County for a portion of the Increased Costs.

H. County and RCL are desirous of amending the Original Agreement to provide for modifications and an increase to the Project Price as set forth in this First Amendment, which will enable the successful completion of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto amend the Original Agreement as follows:

1. All Recital clauses stated above are true and correct and are incorporated herein by reference.

2. Amendments made to the Original Agreement by this First Amendment are indicated by the use of strikethroughs to indicate deletions and bold/underlining to indicate additions, unless otherwise stated (bold/underlining of text in the Original Agreement is omitted for clarity).

3. Section 3.5, County’s Work; Collaboration in Design Services and Preparation of Plans and Specifications, is hereby amended to read as follows:

3.5. County’s Work; Collaboration in Design Services and Preparation of Plans and Specifications.

The County shall provide, and shall be obligated to provide, the design work to be performed by the Architect in connection with the preparation of the Plans and Specifications, the obligations of the County under this Original Agreement and the other Work with respect to the Project which is described in Section 3 of the Scope of Work which is attached hereto as Exhibit A (collectively, the “County’s Work”) in accordance with the schedule for the delivery of such County’s Work set forth in the Project Schedule. The County shall cause the Architect to collaborate and communicate with Construction Agent and the CMR during the design of the Terminal 25 Project and the preparation of the Plans and Specifications and the County agrees to cause the Architect to incorporate the commercially reasonable comments and suggestions of the Construction Agent and the CMR in the design of Terminal 25 and in the preparation of the Plans and Specifications. In furtherance of the foregoing, Construction Agent has agreed to fully fund the Additional Capital Cost (as defined in and utilizing a capital cost recovery charge as set forth in the Berthing Agreement as amended) related to (a) a conveyor system to facilitate embarking passenger baggage screening; (b) exterior MediaMesh to allow for variable displays of graphics depending on the terminal use; and (c) increased costs relating to the final design and awarding of subcontractor contracts by Contractor. County agrees to obtain Construction Agent’s approval of those portions of the Plans and Specifications related to the foregoing items prior to providing Architect...
with its approval of such Plans and Specifications. The County shall be responsible to cause the Architect to perform its obligations under the Architect Agreement, including, without limitation, the timely review, objection and/or approval of any requests for payment by the CMR or any other contractor providing services, labor or materials to the Project for payment by the County. In no event shall the costs to provide any of the County's Work be included in the Guaranteed Maximum Price set forth in the CMRA. The Construction Agent shall have no obligation to oversee or manage the performance by the County of the County's Work and the Construction Agent shall have no liability with respect to any of the County's Work.

4. Article 4, PROJECT PRICE; PROJECT BUDGET AND PROJECT SCHEDULE, is hereby amended to read as follows:

4.1 Project Price. The total costs and expenses to be incurred by the County in connection with the Terminal 25 Project, including all hard and soft costs, shall not exceed the sum of One Hundred Fourteen Million Five Hundred Thirty-One Thousand Seven Hundred Six and 78/100 Dollars ($114,531,706.78) One Hundred Twenty-one Million Five Hundred Twenty Thousand Nine Hundred Thirty-seven Dollars ($121,520,937.00) (the “Project Price”). Any future increases in the Project Price to be paid by the County that are not subject to RCL's capital cost recovery charge or that exceed One Hundred Thousand Dollars ($100,000.00) per adjustment shall require prior approval by the Board.

4.2 Project Budget. The Project Budget for the Project is attached hereto as Revised Exhibit A-1. Any changes to the Project Budget (other than changes to the GMP) must be approved by the written consent of both the Construction Agent and the Contract Administrator. Any changes to the GMP shall be made in accordance with the approval procedure set forth in Article 11 of this Original Agreement. The County agrees to promptly advise Construction Agent in writing as the County obtains updated cost amounts for the components of the County's Work set forth on Revised Exhibit A-1 attached hereto. The County shall promptly deliver to Construction Agent an updated Revised Exhibit A-1 setting forth such updated cost amounts for the County's Work as such amounts are being finalized by the County (time being of the essence).

4.3 Project Schedule. The Project Schedule for the construction of the improvements to Terminal 25 and the completion of the Project, including, the County's Work, is attached hereto as Exhibit A-2. The Construction Agent shall have the exclusive right, power, and authority to initiate and/or approve any changes to the Project Schedule; provided that the Construction Agent provides prior written notice to the Contract Administrator of any such changes to the Project Schedule. In the event any proposed change to the Project Schedule affects the timing of the delivery of any portion of the County's Work, then, such change shall be subject to the commercially reasonable consent of the Contract Administrator. In the event Contract Administrator fails to approve or deny any request for the County’s approval to the modification of the Project Schedule within five (5) calendar days of the request, such proposed modification shall be deemed approved by the County for all purposes.
5. The Original Agreement is hereby amended to provide that all references to "Exhibit A-1" shall be replaced with "Revised Exhibit A-1."

6. Except as expressly modified herein, all remaining terms and conditions of the Original Agreement shall remain in full force and effect.

7. This First Amendment incorporates and includes all prior negotiations, correspondence, conversations, and understandings applicable to the matters contained herein and there are no commitments, agreements, or understandings concerning the subject matter of this First Amendment that are not contained herein. Accordingly, no deviation from the terms and conditions of this First Amendment shall be predicated upon any prior representations or understandings, whether oral or written.

8. This First Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same.

9. This First Amendment is effective on the date it is fully executed by the Parties.

10. In the event any provision of this First Amendment is found by a court of competent jurisdiction to be invalid, that provision shall be deemed severed from this First Amendment, and the remaining provisions of this First Amendment shall continue to be in full force and effect.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of ______________, 2018, and ROYAL CARIBBEAN CRUISES LTD., signing by and through its ________________, duly authorized to execute same.

County:

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

By:__________________________________
Mayor

Broward County Administrator, as Ex-officio Clerk of the Broward County Board of County Commissioners

____ day of ________________, 2018

Insurance requirements
Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By:__________________________________
Signature (Date)

Russell J. Morrison (Date)
Sr. Assistant County Attorney

Print Name and Title above
FIRST AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND ROYAL CARIBBEAN CRUISES LTD. FOR CONSTRUCTION AGENCY SERVICES FOR CRUISE PASSENGER TERMINAL 25 IMPROVEMENTS AT PORT EVERGLADES

RCL:
ROYAL CARIBBEAN CRUISES LTD., a Liberian corporation authorized to transact business in the state of Florida

WITNESSES:

(Signature)  
(Print Name)  
(Signature)  
(Print Name)

By: ________________________________  
(Print Title)  
_____ day of _____________, 2018

ATTEST:

Corporate Secretary  
(Print Name of Secretary)

(CORPORATE SEAL)
Terminal 25 Expansion Project Budget: Per-Contract

Base-Budget:
- Demo, site, reno, infill, addition, foundations, fendering, bollard: $51,670,860.00

Scope-Additions:
- Branding, entry plaza, ext concourse, baggage annex, T21 canopy: $10,576,000.00

Additional-Costs:
- Environmental: $1,684,076.00
- F&E: $3,000,000.00
- Technology: $1,250,000.00
- Total: $5,934,076.00

Optional:
- Midport Garage: $6,773,418.00
- Subtotal without escalation: $74,544,354.00

Escalation:
- Calculated at 3%: $2,236,630.62
- Subtotal Construction: $76,790,984.62

Contingency:
- Design at 15%: $11,518,647.69
- Construction at 10%: $7,679,098.46
- Total Construction: $19,197,746.16

Construction Agreement:
- *Reconciled Guaranteed Maximum Price provided in Construction Agreement: $98,924,869.00

Additional Items:
- **Furniture, Fixtures, Equipment
  - Conveyor System for Baggage Annex: $1,228,092.00
- Subtotal: $100,152,961.00

County
- Design Costs/B&A: $7,505,705.00
- Gangways: $6,400,000.00
- Art: $700,000.00
- Design MPG Cost: $275,000.00
- County Contingency at 10%: $1,412,271.00
- Atkins/County Staff: $400,000.00
- RCCL Costs: $1,500,000.00
- Liability: $250,000.00
- Additional Insurance Cost: $250,000.00
- Total: $14,980,705.00

Additional Items:
- Gangway Additional Steel Costs: $200,000.00
- CBP Technology: $625,000.00
- Building 28 Construction Estimate - Less Contingency: $1,600,000.00
- Building 28 Soft Costs: $525,000.00
- Additional Insurance Cost: $250,000.00
- Subtotal: $21,367,976.00

Grand Total: $114,521,706.78

Notes:
*Incremental costs associated with the exterior MediaMesh are included in the RGMP.
**Cost associated with Furniture, Fixtures, and Equipment ("FF and E") is an amount not to exceed one million dollars. The actual cost amount will be removed from the Reconciled GMP through a deductive change order to allow RCL to purchase FF and E directly.