

Memorandum



Date: December 4, 2018

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in dark ink, appearing to read "Gimenez", written over the printed name.

Agenda Item No. 8(J)(1)

Subject: Resolution Approving and Authorizing Execution of a Memorandum of Understanding Between Miami-Dade County and Virgin Cruises Intermediate Limited for First Right to Negotiate for the Construction of a New Cruise Terminal on the Northwest Corner of the Port

Recommendation

It is recommended the Board of County Commissioners (Board) approve the accompanying resolution approving and authorizing the execution of a Memorandum of Understanding ("MOU") between Miami-Dade County ("County") and Virgin Cruises Intermediate Limited ("Virgin") for first right to negotiate for the construction of a new cruise terminal on the northwest corner of the Port.

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 Memorandum of Understanding 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 memorandum.

Fiscal Impact/Funding Source

This item has no fiscal impact. The purpose of this MOU is to authorize negotiations with Virgin, and any agreement resulting from those negotiations would be subject to this Board's approval. The Port anticipates that the maximum project budget for the development of the new cruise terminal would be \$150 million.

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, Assistant Director.

Background

Virgin Cruises Intermediate Limited is a Bermuda exempted company registered and authorized to transact business in Florida. This new cruise line currently has four vessels on order, the first of which will be delivered early 2020 and homeport at PortMiami.

On June 30, 2015, the Board approved Resolution No. R-576-15, which authorized the execution of a Preferential Berthing Agreement with Virgin. The agreement has a five-year term with an

additional five-year renewal option, and guarantees that Virgin will homeport its first new vessel at PortMiami commencing March 2020.

Virgin is entering the cruise industry with initial plans to design, build and operate new state-of-art cruise vessels, each with a capacity of approximately 2,750 cruise passengers. Its first vessel will homeport at PortMiami sailing year-round 5/5/4-day itineraries, which is more than its current contractual seven-day itinerary (approximately 78 calls per year versus a current guarantee of 50 calls per year). Now, Virgin desires to homeport a second vessel at the Port, starting fall 2021, with a seasonal seven-day itinerary. Due to current contractual terms with other cruise lines, PortMiami does not have berthing availability to homeport a second Virgin vessel.

This MOU between the Parties outlines the intention to increase Virgin's berthing capacity at PortMiami by offering Virgin the first right to enter into negotiation for the construction of a new cruise terminal on the northwest corner of the Port. Such facility will allow the Port to expand its cruise business by allowing Virgin to homeport two ships in Miami (one year-round vessel plus one seasonal vessel).

Responding to the opportunity to grow its presence in Miami and secure berthing availability at the Port, this proposed MOU is respectfully recommended for approval, as follows:

- Virgin will have the first right to enter into negotiations for the construction of a new cruise terminal on the northwest corner of the Port, currently designated as Cruise Terminal H.
- The Project contemplates approximately 5.1 acres located on the northwest corner of the Port (identified in Exhibit 1) capable of accommodating vessels up to 965 feet in a homeport operational capacity, including a new bulkhead and apron, a new terminal complex, provision staging and loading areas, and intermodal staging areas.
- Development of the Site is conditioned on the County's ability to relocate current tenants out of the existing Terminal H building and to obtain environmental permits for the berth and pier.
- The Parties shall agree on a project timeline, financial commitments, which may include a passenger capital recovery surcharge (potentially inclusive of Virgin's architectural, engineering and specialty consultant costs for the development and implementation of design criteria), minimum annual revenue commitment, commencement of construction and substantial completion dates, with the goal of project completion and vessel operations in November 2021.
- The existing Preferential Berthing Agreement between the County and Virgin shall be amended and presented to the Board to provide, among other items, a full financial model.

The maximum project budget for the development of the new cruise terminal will be \$150 million. Additionally, consistent with past practices, the Port would procure terminal-related items, including two passenger boarding bridges or jetways, internal furniture, fenders, and U.S. Customs and Border Patrol Equipment.

With a year-round 5/5/4 itinerary and the addition of a seasonal seven-day itinerary, the Port has the potential to generate approximately \$12.5 million in gross revenues annually, starting Fiscal Year 2022, and increasing by three percent each following Fiscal Year.

This MOU shall be effective until one of the following occurs: (i) execution and delivery of a binding New Amended and Restated Preferential Berthing Agreement, (ii) written notice from Virgin that its

Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners
Page No. 3

deployment plans will obviate the need for a new terminal, (iii) mutual agreement of the Parties to terminate, or (iv) June 1, 2019, unless the Parties agree in writing to extend.

Pursuant to the MOU, the County commits to negotiating in good faith with Virgin 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.

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

Jack Osterholt
Deputy Mayor



MEMORANDUM

(Revised)

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

DATE: December 4, 2018

FROM: 
Abigail Price-Williams
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 ____, 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)(1)
12-4-18

RESOLUTION NO. _____

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND VIRGIN CRUISES INTERMEDIATE LIMITED FOR FIRST NEGOTIATION RIGHTS TO NEGOTIATE THE CONSTRUCTION OF A NEW CRUISE FACILITY ON THE NORTHWEST CORNER OF THE PORT, CURRENTLY DESIGNATED AS CRUISE TERMINAL H; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE EXECUTE SAME AND EXERCISE ALL RIGHTS CONTAINED THEREIN

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 the Memorandum of Understanding (the "MOU") between Miami-Dade County and Virgin Cruises Intermediate Limited, providing for first right to negotiate for the construction of a new cruise facility on the northwest corner of the Port, currently designated as Cruise Terminal H.

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

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 the resolution duly passed and adopted this 4th day of December, 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.

MAG

Miguel A. Gonzalez

This **MEMORANDUM OF UNDERSTANDING ("MOU")** is made this ____ day of November, 2018 ("Effective Date"), by and between:

- A. **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as ("County")), of the first part, and;
- B. **Virgin Cruises Intermediate Limited**, a Bermuda exempted company registered and authorized to transact business in Florida, (hereinafter referred to as "Virgin"), of the second part.

Each of the above parties shall 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; and

WHEREAS, the County operates the Port through Miami-Dade Seaport Department which is a department of the County; and

WHEREAS, Virgin is a Bermuda exempted company registered and authorized to transact business in Florida; and

WHEREAS, Virgin has entered the cruise business with initial plans to design, build and operate new state-of-the-art cruise vessels, all with a capacity of approximately 2,750 cruise passengers; and

WHEREAS, on June 30, 2015, via Resolution No. R-576-15, the Miami-Dade Board of County Commissioners (the "Board") approved a Preferential Berthing Agreement wherein Virgin agreed to, among other things, exclusively homeport its first new vessel at PortMiami (the "Preferential Berthing Agreement"); and

WHEREAS, Virgin desires to homeport a second vessel at PortMiami starting fall 2021, which would require seasonal berthing availability at a terminal on Saturdays; and

WHEREAS, Virgin desires to increase its berthing capacity at PortMiami with the construction of a new Cruise Terminal located at the northwest corner of the Port, currently designated as Cruise Terminal H (the "Project"); and

WHEREAS, the County desires to allow for the growth of Virgin within the Port by offering it a first right to negotiate for certain identified land, all subject to the terms and conditions more particularly set forth below; and

WHEREAS, the Parties desire to enter into this MOU, which summarizes the general intent contemplated by the Parties in order to agree upon a binding legal document to be presented to the Board for the implementation of the Project.

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

1. First Right to Negotiate

For so long as this MOU remains in effect, the Port agrees that Virgin shall have the First Right to Negotiate for the construction of a new terminal in the County land identified in Exhibit 1 attached hereto and incorporated herein by this reference (the "Site"). The "First Right to Negotiate" shall be defined as the commitment of the Port and Virgin to enter into negotiations for a definitive agreement for the construction of the Project at the Site in substantially the terms outlined in this Memorandum of Understanding. For so long as the Parties are in such negotiations, which period shall not exceed beyond June 1, 2019 (unless extended by the Parties in accordance with Section 3(d) below), the Port agrees not to commit the Site for any new uses or purposes that are inconsistent with the Project or the proposed development of a new terminal for Virgin. Virgin intends for the Project to serve as a homeport for Virgin's second vessel currently on order that is capable of carrying approximately 2,750 passengers. Virgin shall notify the County in accordance with Section 3(b) below of any deployment plans for its fleet that would reduce or eliminate Virgin's desire to occupy the Site, and, upon expiration of the notice period, the First Right to Negotiate and the County's commitments hereunder shall expire.

2. Project Description

The following are general guidelines of the transaction to be negotiated between the Port and Virgin and shall be binding only if contained in formal contract documents that have been approved by the governing entities or board of directors of the Parties and executed by the authorized officers of said Parties:

- (a) The Site is intended to be approximately 5.1 acres located at the northwest corner of the Port, which is more particularly identified in the attached Exhibit 1. This Site is inclusive of the Port's C3 facility, which shall remain as a functioning Port facility (unless the C3 moves to another port location and becomes part of the project budget). The Project shall consist of the demolition/conversion of the remaining Cruise Terminal H building into a cruise ship pier complex capable of accommodating vessels of up to 965 feet in a homeport operational capacity, including a new bulkhead and apron, terminal complex, provision staging and loading areas, intermodal staging areas and parking facilities suitable for Virgin's passengers and operations.
- (b) Development of the Site for this Project is expressly conditioned on the County's ability to relocate the Port's current tenants at the existing Cruise Terminal H building, and to obtain the berth and pier environmental permits.

- (c) The Parties anticipate agreeing on a project timeline including financial commitments, which may include a passenger capital recovery surcharge (potentially inclusive of Virgin's architectural, engineering and specialty consultant costs for the development and implementation of design criteria), minimum annual revenue commitment, commencement of construction, and substantial completion dates, with the understanding that the Parties will endeavor to complete the Project so that Virgin's second vessel may commence operations in November 2021.
- (d) The Parties agree to discuss amending the existing Preferential Berthing Agreement in order to address financing and mutual benefits that may facilitate the completion of the transaction contemplated hereby.

3. Termination

This MOU shall be effective from the Effective Date until one of the following occurs:

- (a) Execution and delivery of the binding New Amended and Restated Preferential Berthing Agreement or an equivalent amendment of the existing Preferential Berthing Agreement; or
- (b) Upon thirty (30) days' advance written notice from Virgin that it intends to terminate this MOU because definitive deployment plans for its fleet eliminate its desire to occupy the Site; or
- (c) Mutual agreement of the Parties to terminate; or
- (d) June 1, 2019, unless the Port Director and Virgin mutually agree in writing to extend negotiations beyond said date.

Upon termination of this MOU, this MOU shall terminate automatically without further notice by either Party.

4. Effect of this MOU

The terms set forth in this MOU shall be non-binding and shall be subject to and superseded by the terms and conditions to be negotiated, approved and included in the New Amended and Restated Preferential Berthing Agreement (or an equivalent amendment of the Preferential Berthing Agreement) to the extent the Parties execute any such agreement, which agreement shall 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. In the event any element of the contemplated Project or New Amended and Restated Preferential Berthing Agreement (or an equivalent amendment to the Preferential Berthing Agreement) cannot be achieved or implemented due to legal issues or impediments, the Parties will attempt in good faith to

explore alternative viable options. For so long as this MOU remains in effect, the Parties agree to be bound by the terms of their agreement to negotiate in the manner set forth in Section 1 and the Port agrees not to commit the Site for any new uses or purposes that are inconsistent with the Project or the proposed development of a new terminal for Virgin as set forth in Section 4 herein above.

5. Miscellaneous

This MOU shall be governed by the laws of the State of Florida (without giving effect to principles of conflicts of laws which would have the effect of causing another territory's or state's law to be applicable). 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]

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

Virgin Cruises Intermediate Limited

ATTEST:

By: 

By: 

Name: Tam McAlpin
Title: President & CEO

EXHIBIT 1



Inclusive of CT G Provisions