

MEMORANDUM

Agenda Item No. 8(J)(3)

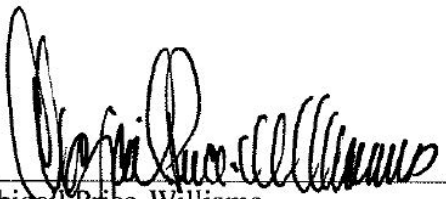
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 21, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution authorizing the County Mayor to negotiate and execute an amendment to the Preferential Berthing Rights Agreement between the County and Virgin Cruise Intermediate Limited (Virgin) to permit changes to the design, construction, and delivery requirements that would generate savings to the County; further authorizing the County Mayor to make corresponding adjustments to the capital recovery obligations based on the savings realized on capital expenditures; and directing the County Mayor to place a written report on an agenda of this Board within 30 days after the execution of an amendment to the Preferential Berthing Rights Agreement

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Rebeca Sosa.



Abigail Price-Williams
County Attorney


APW/smm

Memorandum



Date: July 21, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing the County Mayor or the County Mayor's Designee to Amend the Preferential Berthing Rights Agreement Between the County and Virgin Cruise Intermediate Limited to Allow for Changes to the Design, Construction, and Delivery Requirements for the New Cruise Terminal V Project

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution, which authorizes the County Mayor or the County Mayor's designee to negotiate and execute an amendment between the County and Virgin Cruise Intermediate Limited (Virgin) to allow for modifications to the design, construction, and delivery requirements regarding the new Cruise Terminal V project. The resolution also authorizes the County Mayor or County Mayor's designee to make adjustments to the capital recovery obligations based on the savings realized on capital expenditures.

Scope

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

Background

On September 19, 2019, the Board approved Resolution No. R-992-19, authorizing the execution of a Preferential Berthing Rights Agreement, (the "Agreement") between Miami-Dade County (County) and Virgin, for the construction of the new Cruise Terminal V (Project). Under the terms of the Agreement, the County will construct the Project for Virgin on approximately 5.1 acres of land located on the northwest corner of the Port. The Project includes a new bulkhead and apron; a new terminal complex; provision, staging, loading, and intermodal areas with a Substantial Completion Date of October 15, 2021.

The County conducted a formal competitive bidding process for the Project. In December 2019, after negotiations with the highest ranked proposer, and pursuant to the authority delegated via Resolution No. R-992-19 and the Miami-Dade Seaport Department Capital Improvement Programs Expedite and Acceleration Ordinance, the County entered into a design-build contract with Suffolk Construction Company, Inc. (Suffolk) for an amount not to exceed \$175,547,119.20.

In the context of the coronavirus disease 2019 (COVID-19) pandemic, the County and its cruise partners have been working to identify potential reductions in capital expenditures. The purpose of this item is to create a mechanism for amendments to the design,

construction, and delivery requirements in the Agreement that would yield substantial savings to the County.

The authority requested herein is necessary because the Agreement requires the County to develop the Project in a manner consistent with the design criteria package attached thereto. Similarly, the Agreement requires the delivery of the Project by October 15, 2021.

In its current form, the Agreement only authorizes reductions in scope from the design criteria package when cost overruns are incurred; the anticipated amendment would grant the County authority to make scope reductions that are mutually acceptable to the County and Virgin, which would generate savings to the County. The County and Virgin have been collaborating to identify specific elements of the Project that can be modified to realize cost savings without impacting the overall caliber of the Project.

The Port has already begun cost-reduction negotiations with Suffolk, and the authority granted in the accompanying resolution will complement the County's negotiation efforts with Suffolk.

Fiscal Impact/Funding Source

The accompanying resolution will have a neutral or positive fiscal impact on the County, to the extent it results in a successfully negotiated reduction to the design, construction, and delivery requirements for the Project and the corresponding agreed-upon adjustment to the capital recovery obligations set forth in the existing Agreement. Under the Agreement, the County is responsible to fund all project costs and is responsible for any cost overruns above \$179,000,000, as long as the cost overruns are not the result of Virgin-requested changes. The precise fiscal impact of the Project reductions will be based on the outcome of the negotiations between the County, Suffolk, and Virgin and will be presented to the Board in a report after the amendment is executed. In no event will this amendment result in the County incurring additional costs beyond those reported to the Board in the memorandum accompanying Resolution No. R-992-19.

Parallel to the review of capital expenditures, the County and Virgin will revisit other terms of the Agreement (e.g., minimum annual guarantees and incentive payments) and, if agreement is reached on amendments to those terms, present an item to this Board for its consideration and approval within 90 days.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring this Agreement are Hydi Webb, Deputy Director and Andy Hecker, Managing Port Director, CFO, and Elizabeth Ogden, Assistant Port Director, Capital Development.

Delegated Authority

The accompanying resolution authorizes the County Mayor or County Mayor's designee to negotiate and execute an amendment to the Agreement with Virgin that would generate savings to the County through changes to the design, construction, and delivery requirements for the Project as contemplated in the Agreement. The resolution also authorizes the County

Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners
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Mayor or County Mayor's designee to make corresponding adjustments to the capital recovery obligations based on the savings realized on capital expenditures.

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

Jack Osterholt
Deputy Mayor

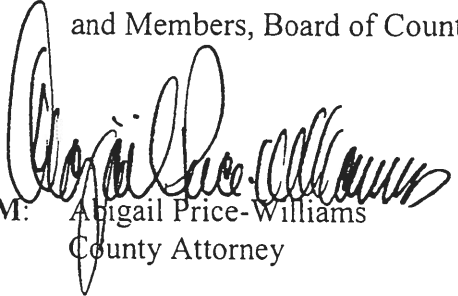


MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 21, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(J)(3)

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)(3)
7-21-20

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE PREFERENTIAL BERTHING RIGHTS AGREEMENT BETWEEN THE COUNTY AND VIRGIN CRUISE INTERMEDIATE LIMITED (VIRGIN) TO PERMIT CHANGES TO THE DESIGN, CONSTRUCTION, AND DELIVERY REQUIREMENTS THAT WOULD GENERATE SAVINGS TO THE COUNTY; FURTHER AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO MAKE CORRESPONDING ADJUSTMENTS TO THE CAPITAL RECOVERY OBLIGATIONS BASED ON THE SAVINGS REALIZED ON CAPITAL EXPENDITURES; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PLACE A WRITTEN REPORT ON AN AGENDA OF THIS BOARD WITHIN 30 DAYS AFTER THE EXECUTION OF AN AMENDMENT TO THE PREFERENTIAL BERTHING RIGHTS AGREEMENT

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 authorizes the County Mayor or County Mayor's designee to negotiate and execute an amendment to the Preferential Berthing Rights Agreement (the "Agreement") approved by this Board through Resolution No. R-992-19 that would generate savings to the County through changes to the design, construction, and delivery requirements for the project contemplated in the Agreement. The County Mayor or County Mayor's designee is further authorized to make corresponding adjustments to the capital recovery obligations based on the savings realized on capital expenditures. In addition, the County Mayor or County Mayor's designee is directed, within 30

days of the execution of any amendment to the Agreement, to place a written report on an agenda of this Board in accordance with Ordinance No. 14-65, which report shall set forth a summary of the revisions to the Agreement made pursuant to the authority delegated by this resolution.

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:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared this resolution duly passed and adopted this 21st day of July, 2020. 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