

**BCC Meeting
October 20, 2020
Research Notes**

**Item No. 14A8
File No. 201963**

Researcher: TA Reviewer: PGE

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AMENDMENTS TO (1) PREFERENTIAL BERTHING RIGHTS AGREEMENTS AND CRUISE TERMINAL USAGE AGREEMENTS PROVIDING FOR A TWO-PHASE CORONAVIRUS DISEASE 2019 (COVID-19) RECOVERY PERIOD AND (2) THE GROUND LEASE WITH MIAMI CRUISE TERMINAL A, L.L.C. AND ITS PERMITTED ASSIGNEE (MCTA GROUND LEASE); PROVIDING THAT SUCH AMENDMENTS HAVE AN ESTIMATED FISCAL IMPACT OF \$68,500,000.00 FOR THE FIRST PHASE OF THE COVID-19 RECOVERY PERIOD, INCREASING AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH UNTIL THE COMMENCEMENT OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD, AND THEN AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH, SUBJECT TO REDUCTION BASED ON THE DURATION OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD AND PASSENGER VOLUMES; PROVIDING THAT ANY AMENDMENTS SHALL BE SUBJECT TO ANY PRIOR REVIEWS AND SATISFACTION OF ANY PRE-CONDITIONS REQUIRED UNDER THE SEAPORT BOND ORDINANCE, ORDINANCE NO. 88-66, AS AMENDED, AND OTHER SEAPORT-RELATED COUNTY DEBT FACILITIES AND SHALL PROVIDE FOR THE IMPLEMENTATION OF ANY REQUIREMENTS OR RECOMMENDATIONS OF THE CONSULTING ENGINEERS UNDER THE SEAPORT BOND ORDINANCE; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF ANY AMENDMENT TO THE MCTA GROUND LEASE TO THE PROPERTY APPRAISER'S OFFICE IN ACCORDANCE WITH RESOLUTION NO. R-791-14; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PERFORM ALL ACTS AND EXECUTE ANY DOCUMENTS AS MAY BE REQUIRED TO GIVE EFFECT TO THE INTENT OF THIS RESOLUTION AND ANY AMENDMENTS NEGOTIATED AND EXECUTED AS PROVIDED HEREIN; AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06

ISSUE/REQUESTED ACTION

Whether the Board should authorize the Mayor to negotiate and execute amendments to (1) preferential berthing rights and terminal usage agreements with cruise lines that have such agreements at PortMiami and (2) the ground lease with Miami Cruise Terminal A, LLC (MCTA), an affiliate of Royal Caribbean International, to address Fiscal Year 2019-20 obligations and to establish a COVID-19 Recovery Period.

PROCEDURAL HISTORY

**Prime Sponsor: Commissioner Rebeca Sosa, representing Commission District 6
Department/Requester: PortMiami**

This item was approved with a favorable recommendation at the TAPS Committee on October 15, 2020.

ANALYSIS

The purpose of this item is to authorize the Mayor or his/her designee to negotiate and execute the following:

- 1) Amendments to berthing rights agreements and cruise terminal usage agreements, providing for a two-phase COVID-19 Recovery Period; and
- 2) Amendments to the Ground Lease Agreement with Miami Cruise Terminal A, LLC (MCTA) and its permitted assignee Sumitomo Mitsui Banking Corporation Lease and Finance (SMBE-LF) with respect to Cruise Terminal A, providing for a two-phase COVID-19 Recovery Period.

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The amendments will be substantially in the form described in the mayoral memo, as the negotiated agreements are not attached as part of the item. To ensure the execution of the amended agreements can be expedited, this item also requests a waiver of Resolution No. R-130-06, which requires the completion of negotiations and execution by non-County parties prior to presentation to the Board. The amended agreements do not have to return to the Board for approval, but the amendments must satisfy any pre-conditions and covenants required under the Seaport Bond Ordinance and other Seaport-related County debt facilities. In addition, any such amendments must incorporate any requirements or recommendations of the Consulting Engineers under the Seaport Bond Ordinance.

PortMiami has proposed the concept of a “COVID-19 Recovery Period” to provide for a two-phase approach to supporting the cruise industry as they resume operations and return to normalized cruise passenger volumes. The proposed relief framework is summarized in Table 1 below:

Table 1.

COVID-19 Recovery Period	Time Frame	Industry Support	Fiscal Impact
Phase 1	March 13, 2020 through a period that ends the earlier of: <ul style="list-style-type: none"> • 60 days from the lifting of the No Sail Order in its current form (unless passenger cruise operations in U.S. waters for said line being sooner); or • July 1, 2021 	Waiver of lay berth and harbor fees for vessels with no passenger movement until September 30, 2020. Excusal from minimum annual guarantee obligations Not required to use their accumulated surplus credits to cover any shortfalls	\$55M revenue loss, including projected revenues from cruise associated activities such as parking and transportation fees, through the end of Fiscal Year 2019-2020 \$13.5M revenue loss for the balance of the Phase 1 Recovery period For every month the No Sail Order extends beyond September 30, 2020, the revenue loss increases by \$7M per month
Phase 2	Commences immediately upon the conclusion of Phase 1 (no later than July 1, 2021) and lasts up to 24 months.	Excusal from minimum annual guarantee obligations, subject to certain conditions Not required to use their accumulated surplus credits to	\$7M revenue loss and \$1M in ancillary cruise-related revenues, in the event that no cruises sail during the entire Phase 2 Recovery Period.

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		cover any shortfalls; nor shall any credits accrue Cruise lines will be required to pay dockage and wharfage fees Parking-based incentives will be waived	Assuming cruise lines resume sailing as soon as permitted, cruise lines will be required to compensate the County based on their actual usage of the Port.
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The mayoral memo details the offset of the above \$55 million fiscal impact of Phase 1. It is summarized as follows in Table 2 below:

Table 2.

Action	Savings
Hiring freeze and elimination of overtime	\$8,000,000
Deferral of sponsorships, advertising, memberships, terminal activities and other marketing efforts	\$5,000,000
Reduction in business travel, promotions, and other administrative expenses	\$5,000,000
Sunsetting of cargo incentive program (elimination of rebates)	\$6,000,000
Reduction in volume-based cruise incentives	\$4,000,000
Savings on interest expenses on variable rate debt	\$7,000,000
Budgeted surplus for Fiscal Year 2019-2020	\$10,000,000
Port's Unrestricted Reserve	\$10,000,000
Total Savings	\$55,000,000

To offset the balance of revenue losses for Phase 1, approximately \$32 million in non-revenue generating capital improvement projects has been deferred, Additional savings measures in Fiscal Year 2020-2021 include negotiating scope reductions to existing capital improvement projects, reducing reliance on outside consultants, and developing new sources of revenue.

With respect to amendments to the MCTA operating agreement, the ground rent payment to the County for Cruise Terminal A (CT-A) will be pro-rated to reflect the Recovery Period time frames and requirements. The Mayor or his/her designee may also negotiate additional conditions for the benefit of the County as part of the amended lease.

The mayoral memo indicates that the Port remains financially strong heading into Fiscal Year 2020-2021 with \$114 million in unrestricted reserves and can meet all financial obligations without tapping the reserves until April 18, 2021, based on current published itineraries and assuming full occupancy. If cruise operations were to resume for an extended period of time, the unrestricted reserves would be sufficient to make the Port's cash requirements for operating expenses, including debt service through September 30, 2022, but the Port would likely miss its required debt service coverage ratios under Ordinance No. 88-66, as amended. The Government Finance Officers Association (GFOA) recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular

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general fund operating expenditures.¹ While the PortMiami budget is proprietary, this may be a prudent threshold to strive to maintain given the uncertainty for when the industry will rebound.

DEPARTMENTAL INPUT

OCA asked PortMiami the following questions on October 15, 2020; the department's responses are *italicized*.

- 1) What are all the cruise lines that the Port will be amending agreements with?

PortMiami Response: *Carnival Corp., Disney Cruise Line, MSC Cruises, Norwegian Cruise Line, Royal Caribbean Cruises Ltd, Virgin Voyages*

- 2) Since the No Sail Order was extended on September 30, 2020 to October 31, 2020 (after this item was prepared), are there any further indications that the order will be extended again and, if not, which cruise lines are or are expected to be booking sailings prior to the end of 2020?

PortMiami Response: *Cruise lines are waiting for the CDC's No Sail Order to expire on October 31st. If no further extension to the order is imposed, cruise ships could sail as soon as December 2020.*

- 3) Are you aware of other Ports providing or who will provide similar COVID-19 relief measures or a transitional recovery plan?

PortMiami Response: *We are aware requests have been made by cruise lines to other ports, but not of these details or outcome.*

ADDITIONAL INFORMATION

Cruising in the United States has been halted since the U.S. Centers for Disease Control and Prevention (CDC) issued a "No Sail" order in mid-March 2020. The order has been extended several times, prohibiting cruise ships from sailing in U.S. waters, while limited operations have resumed in Europe. The CDC originally sought to extend the ban for U.S. based cruise ships through February 2021, but instead has extended the ban until October 31, 2020. The Cruise Lines International Association (CLIA), the world's largest cruise industry association, has agreed to a voluntary suspension of U.S. cruise operations through October 31, 2020. The CLIA members include: Carnival, Crystal, Disney, MSC, Norwegian, Oceania, Princess, Regent, Royal Caribbean, and Virgin Cruises. Assuming no further extensions of the No Sail Order, the first phase of the Recovery Period would conclude on December 30, 2020.² According to Port Canaveral Chief Executive Officer John Murray, even if the no-sail order ends Oct. 31, cruising is not realistically expected to resume until mid- to late-November, "at the absolute earliest."³

In its recent justification for extending the No Sail Order until October 31, 2020, the CDC has said it is not confident that changes the cruise industry has implemented in Europe to curb the spread of COVID-19 on cruise ships are working adequately. The CDC noted that recent passenger voyages in foreign countries continue to have outbreaks, despite

¹ <https://www.gfoa.org/materials/fund-balance-guidelines-for-the-general-fund>

² The mayoral memo specifies that the end of the first phase of the Recovery Period would be November 29, 2020, when the No Sail Order was to end on September 30, 2020. The No Sail Order was extended to October 31, 2020 on September 30, 2020.

³ <https://www.floridatoday.com/story/news/local/2020/10/01/cdc-extends-no-sail-order-cruise-lines-questions-efforts-europe/5877231002/>

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cruise ship operators having extensive health and safety protocols to prevent COVID-19 transmission on board and spread to communities where passengers disembark. In mid-September, the Healthy Sail Panel, which includes representatives from Royal Caribbean and Norwegian Cruises, submitted a report to the CDC with 74 recommendations to prevent the introduction and mitigate the spread of COVID-19 on cruise ships, including testing, face coverings and temperature checks (<https://www.royalcaribbean.com/content/dam/royal/resources/pdf/healthy-sail-panel-full-recommendations.pdf>). Each cruise company would develop its own protocol details once the CDC ultimately decides appropriate guidelines when cruising resumes. On October 9, 2020, Vice President Mike Pence joined cruise industry executives and the CDC director on a call to discuss COVID-19 and how the industry plans to approach the restart of operations. The industry's proposal to resume sailing will be presented to the White House Task Force, which will then provide a recommendation to President Donald Trump for next steps.

<https://www.floridatoday.com/story/news/local/2020/10/01/cdc-extends-no-sail-order-cruise-lines-questions-efforts-europe/5877231002/>

<https://www.usatoday.com/story/travel/cruises/2020/09/21/norwegian-royal-caribbean-cruise-panel-suggests-covid-19-rules/5839739002/>

<https://www.usatoday.com/story/travel/cruises/2020/10/10/pence-cruise-line-ceos-talk-resumption-sailing-us/5952097002/>

OCA contacted Broward County's Port Everglades on October 9, 2020 to inquire about any COVID-19 relief offered to its cruise lines and spoke with Glenn Wiltshire, Deputy Director. Mr. Wiltshire advised that the Board of County Commissioners' policy has been to not grant assistance in the form of fee waivers, despite cruise lines making requests for relief and even referring to what is being done at PortMiami. He noted that Port Everglades is different from PortMiami in that more of their berths are used for cargo ships and it did not make financial sense for them to allow cruise ships to dock there and not pay fees. In fact, since March 2020, the cruise lines have generally still paid their lay-in fees, although Port Everglades has granted deferrals of payment. Their tariff structure is like a bundled rate, which includes dockage, wharfage, line handler, fees so they are not suspending minimum annual guarantees; however, he acknowledged that they are considering alternatives to assist their partners as they resume operations. He also shared that Royal Caribbean, Celebrity, Home America, Princess, and Carnival is anticipated to have bookings by the end of the year, but Carnival would only sail at least initially out of PortMiami and Port Canaveral.

OCA also contacted Brevard County's Port Canaveral via phone and e-mail on October 9, 2020 and spoke with Diane Luensmann, Vice President of Government & Strategic Communications on October 15, 2020. She advised that Port Canaveral has not and has no plans to provide COVID-19 relief. Tariffs have been in effect and there have been very few cruise ships that have berthed there. Since March 2020, there have been mainly a few vessels received for repatriation, taking of fuel shipments, or repairs, etc. She confirmed that Port Canaveral has been drastically impacted by the shutdown in cruise operations. Port Canaveral's revised budget for fiscal year ending September 30, 2020 showed that the port will have an estimated loss of \$17.44 million (cruise-related operations account for 77.6% of the port's revenue in the original budget). As of July 2020, Port Canaveral had already cut 115 positions through layoffs, unpaid furloughs, and leaving vacant positions unfilled; representing about 43% of the port's pre-coronavirus staff level of 268 (153 employees remain on the payroll). She explained that their budget is zero-based, and they have eliminated all discretionary spending and put capital and other projects on hold. The only major exception is Cruise Terminal H for Disney, as the funding is restricted and financing is already in place. She further stated that Port Canaveral is an independent political subdivision with no County Commission backing. While they have the authority to levy ad valorem taxes, they have not done since 1986 and have no desire to do so at this time. Therefore, they are unable to offer any concessions or relief, as their main source of revenues is from cruise lines and the balance is from cargo and real estate.

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<https://www.floridatoday.com/story/news/local/2020/08/04/port-canaveral-seeks-federal-funding-recover-covid-19-cruise-halt/5569578002/>
<https://www.clickorlando.com/news/local/2020/07/31/port-canaveral-cuts-115-jobs-through-layoffs-furloughs-attrition/>

APPLICABLE LEGISLATION/POLICY

Ordinance No. 88-66, adopted on July 5, 1988, authorized the issuance of (i) \$44,950,000 in Florida Seaport Revenue Refunding Bonds, Series 1995, (ii) \$29,270,000 in Florida Seaport Revenue Bonds, Series 1996, and (iii) \$111,375,000 in Florida Seaport General Obligation Refunding Bonds, Series 2011C.

Reference: <http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2013/131179min.pdf>

Resolution No. R-130-06, adopted on January 24, 2006, clarified that proposed agenda items seeking approval of a contract or conveyance and authority to execute same shall not be placed on any committee or commission agenda unless the underlying contract or conveyance is completely negotiated, in final form, and executed by all non-County parties.

<http://www.miamidade.gov/govaction/matter.asp?matter=060239&file=false&fileAnalysis=false&yearFolder=Y2006>

Resolution No. R-791-14, adopted on September 3, 2014, directed the Mayor to provide the Miami-Dade County Property Appraiser a copy of all leases and operating agreements involving County-owned property.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2014/141723min.pdf>

Resolution No. R-732-20, adopted on July 21, 2020, authorized the Mayor to negotiate and execute a Track and Intermodal Container Transfer Facility Usage and Maintenance Agreement between the Florida East Coast Railway, L.L.C. ("FECR") and Miami-Dade County, providing FECR use of certain on-Port rail lines and on-Port intermodal container transfer facility, for an initial term of three years with three additional one-year renewal options upon mutual assent, in consideration of FECR's commitment to, among other things, pay the County a minimum of \$1,200,000.00 in annual on-Port rail and ICTF user fees (subject to a 3% annual escalator), provide on-Port-rail infrastructure and ICFT inspection and certain maintenance services, and release over \$468,000.00 in previously asserted FECR rail maintenance, refurbishment, and marketing cost claims against the County.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2020/201375min.pdf>