

MEMORANDUM

Agenda Item No. 8(J)(2)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: June 15, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving a
Memorandum of Intent between
Miami-Dade County and Royal
Caribbean Cruises, Ltd. and
authorizing the County Mayor to
execute the Memorandum of
Intent and exercise all rights
contained therein, including
rights of extension and
termination

Resolution No. R-599-21

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



Geri Bonzon-Keenan
County Attorney

GBK/jp

Memorandum



Date: June 15, 2021

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Approving and Authorizing Execution of a Memorandum of Intent between Miami-Dade County and Royal Caribbean Cruises, Ltd. to Negotiate a Preferential Berthing Rights Agreement for the Future Shared Cruise Terminal Serving Berths 8, 9, and 10

Recommendation

It is recommended that the Board of County Commissioners (“Board”) adopt the accompanying resolution approving and authorizing the execution of a Memorandum of Intent (“MOI”) between Miami-Dade County (“County”) and Royal Caribbean Cruises, Ltd. dba Royal Caribbean Group (“RCL”) to negotiate a preferential berthing rights agreement for the future shared cruise terminal (the “Shared Terminal”) at PortMiami (“Port”) being designed, built, financed, operated, and maintained by MSC Miami Cruise Terminal LLC (“MMCT”), a subsidiary of MSC Cruises S.A. (“MSC”), which will have the capacity to service 3 cruise vessels simultaneously at Berths 8, 9 and 10.

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

RCL is the world’s second largest cruise company with a fleet of 59 vessels and an additional 14 new vessels on order as of March 31, 2021. RCL and Miami-Dade County have shared a successful and prosperous relationship for more than 50 years. Currently, RCL has two existing berthing agreements with the County, including Cruise Terminal G (approved most recently by the Board via Resolution R-581-16) and Cruise Terminal A (approved by the Board via Resolution R-580-16), in addition to a Campus Lease housing the global and United States headquarters of the cruise line at the Port (approved by the Board via Resolution R-520-19).

Recognizing RCL’s commitment to South Florida, as well as their expansive newbuild program, the Port has been working with RCL to secure additional berths in Miami to accommodate their growth. The Parties have agreed to enter into a non-binding MOI to negotiate the terms of a preferential berthing rights agreement at the Shared Terminal facility being developed by MMCT on the northeast quadrant of PortMiami (approved by the Board on February 21, 2021 via Resolution R-103-21).

The Shared Terminal is an innovative, first-of-its-kind facility that has the capacity and

functionality to be utilized by 3 cruise vessels and more than 1 cruise line simultaneously, including vessels calling at Berth 10, which will be developed by the County in subsequent years. MMCT is developing the Shared Terminal under a Lease Agreement with the County. As part of the Lease Agreement, the County is authorized to designate a Primary Third-Party Cruise Line that, in addition to MSC, will have preferential berthing rights at the terminal and a significant stake in the operational protocols.

For a period of 6 months from the Effective Date of this Memorandum (the "Negotiation Period"), the County and RCL agree to negotiate in good faith a Preferential Berthing Rights Agreement through which RCL will serve as the Primary Third-Party Cruise Line and for RCL's use of the Shared Terminal and associated berths in a manner consistent with the County's rights under the Lease Agreement. The Negotiation Period shall terminate: (1) upon the mutual written agreement of the Parties; (2) execution and delivery of the Preferential Berthing Rights Agreement; or (3) upon the expiration of the Negotiation Period without the Parties' mutual written agreement to extend the Negotiation Period.

As the Primary Third-Party Cruise Line, RCL acknowledges the County's obligation to negotiate an Operation Protocol, as defined and used in the Lease Agreement, commencing within 6 months of the Lease Date. During this period, RCL agrees to identify in writing to the County any significant operational matters requested to be incorporated into the Operation Protocol. Representatives from RCL shall be entitled to attend and participate in any meetings held on the Operation Protocol and the County agrees to undertake commercially reasonable efforts to incorporate such points into the Operation Protocol.

Under the Preferential Berthing Rights Agreement, the County and RCL will, among other things, negotiate terms for minimum revenue guarantees to the County, financing, timing, and construction of Berth 10, a facility which will be operated and maintained by the County and which the County intends to construct with shore power capability. That project will include the construction of Berth 10, a portion of the concourse extension from the Shared Terminal to Berth 10, provisioning, Passenger Boarding Bridge(s) for use at Berth 10, and ancillary work.

Fiscal Impact/Funding Source

There is no fiscal impact contained in this proposed MOI. The purpose of this MOI is to receive approval for negotiations between the County and RCL for the expansion of RCL's footprint at PortMiami operating out of an innovative state-of-the-art shared cruise terminal, as further explained in the Background section above. A full agreement, inclusive of a financial impact analysis, is anticipated to be presented to the Board for its consideration before the end of the calendar year.

Track Record/Monitor

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

Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners
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Delegated Authority

The resolution authorizes the County Mayor or County Mayor's designee to execute the MOI on behalf of Miami-Dade County and to exercise all rights conferred therein, including rights of extension and termination.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 15, 2021

FROM: 
Gen Bonzon-Keenan
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 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)(2)
6-15-21

RESOLUTION NO. R-599-21

RESOLUTION APPROVING A MEMORANDUM OF INTENT BETWEEN MIAMI-DADE COUNTY AND ROYAL CARIBBEAN CRUISES, LTD. AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE MEMORANDUM OF INTENT AND EXERCISE ALL RIGHTS CONTAINED THEREIN, INCLUDING RIGHTS OF EXTENSION AND TERMINATION

WHEREAS, this Board desires to accomplish the objectives set forth in the accompanying memorandum, a copy of which is incorporated herein,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

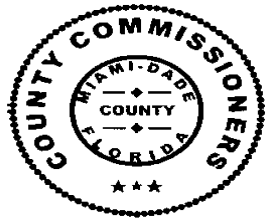
Section 1. Adopts and incorporates herein the foregoing recital.

Section 2. Approves the Memorandum of Intent between Miami-Dade County and Royal Caribbean Cruises, Ltd., in substantially the form attached hereto, and authorizes the County Mayor or County Mayor's designee to execute the Memorandum of Intent and exercise all rights contained therein, including rights of extension and termination.

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

	Jose "Pepe" Diaz, Chairman	aye	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 15th day of June, 2021. 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

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

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

Miguel A. Gonzalez

MEMORANDUM OF INTENT

This Memorandum of Intent (the “Memorandum”) is entered into by and between Miami-Dade County (the “County”) and Royal Caribbean Cruises Ltd. dba Royal Caribbean Group (“RCL”) as of this ____ day of June, 2021 (the “Effective Date”) (together, the County and RCL shall constitute 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 (“PortMiami”) is located, which the County operates through the Miami-Dade Seaport Department, a department of the County; and

WHEREAS, RCL is a leading international cruise company (with a number of cruise lines including Royal Caribbean International, Celebrity Cruises and SilverSea Cruises) that presently uses the Port as a homeport, and RCL has experience in the creation and management of development consortiums in domestic and international destinations and the development and operation of cruise ship facilities and mixed-use projects; and

WHEREAS, The County and RCL entered into that Amended and Restated Terminal Usage Agreement dated as of December 30, 1998, as amended by Amendment No. 1 to The Amended and Restated Terminal Usage Agreement dated as of November 2008, by the Second Amendment to The Amended and Restated Terminal Usage Agreement dated August 3, 2011, and by the Third Amendment to The Amended and Restated Terminal Usage Agreement dated July 18, 2016 (collectively, the “Terminal G Agreement”); and

WHEREAS, RCL operates Terminal A and has preferential berthing rights at Terminal A pursuant to that certain Ground Lease entered into between the County and Miami Cruise Terminal A LLC, a wholly owned subsidiary of RCL, dated July 18, 2016; and

WHEREAS, RCL desires to increase its berthing capacity at PortMiami from a total of two (2) long-term preferential berths (Terminal A and Terminal G) to three (3) long-term preferential berths; and

WHEREAS, PortMiami wishes to allow for the growth of RCL within the Port by offering an exclusive right to enter into a negotiations period with the County; and

WHEREAS, on February 17, 2021 the Board of County Commissioners (the “County Board”) approved Resolution No. R-103-21, which authorized the County Mayor or County Mayor’s designee to enter into that certain Amended and Restated Terminal Development Management and Lease Agreement (the “Lease Agreement”) with MSC Miami Cruise Terminal, LLC (“MMCT”); and

WHEREAS, the Lease Agreement became effective on March 10, 2021 (the “Lease Date”) when it was fully executed by the County and MMCT, with MSC Cruises S.A. (“MSC”) signing the necessary undertaking; and

WHEREAS, the Lease Agreement calls for MMCT’s design, construction, financing, operation, and maintenance of a shared terminal facility (the “Shared Terminal”) that shall accommodate three cruise vessels berthed at Berths 8, 9 and 10; and

WHEREAS, the Lease Agreement authorizes the County to designate a Primary Third-Party Cruise Line and such cruise line has certain preferential berthing rights; and

WHEREAS, after the development of a berthing facility at Berth 10, the Lease Agreement authorizes the Primary Third-Party Cruise Line, and any other cruise lines utilizing Berth 10 to access the berth through the Shared Terminal; and

WHEREAS, RCL desires to serve as the Primary Third-Party Cruise Line, subject to the negotiation of a Preferential Berthing Rights Agreement providing for RCL’s berthing rights at Berths 9 and/or 10 and the development of Berth 10. The Preferential Berthing Rights Agreement is also contemplated to replace the existing Terminal G Agreement and will provide for RCL’s berthing rights at Terminal G;

NOW, THEREFORE, the Parties hereby memorialize their intent to negotiate, finalize, and obtain all necessary approvals for the Preferential Berthing Rights Agreement, including the County Board’s separate approval of said Preferential Berthing Rights Agreement.

Points of Understanding

1. **Incorporation of Recitals.** The Parties approve, adopt, and incorporate herein each of the foregoing recitals.

2. **Receipt of Lease Agreement; Opportunity to Review.** RCL acknowledges that the County has provided it with a true and correct copy of the Lease Agreement and that RCL shall review said Lease Agreement in connection with the negotiation of the matters contained herein and the preparation of the Preferential Berthing Rights Agreement.

3. **RCL as Primary Third-Party Cruise Line.** Subject to execution of a mutually acceptable Preferential Berthing Rights Agreement, RCL agrees in principle to serve as the Primary Third-Party Cruise Line, as such term is used in the Lease Agreement. For a period of six (6) months from the Effective Date of this Memorandum (the “Negotiation Period”), the County agrees that it shall negotiate, on an exclusive basis, a Preferential Berthing Rights Agreement with RCL for its use of the Shared Terminal and associated berths in a manner consistent with the County’s rights under the Lease Agreement. The Parties agree to negotiate a Preferential Berthing Rights Agreement in good faith during the Negotiation Period; provided, however, that the Negotiation Period shall terminate: (1) upon the mutual written agreement of the Parties; (2) execution and delivery of the Preferential Berthing Rights

Agreement; or (3) upon the expiration of the Negotiation Period without the Parties' mutual written agreement to extend the Negotiation Period.

4. **Operation Protocol.** RCL acknowledges the County's obligation to negotiate an Operation Protocol, as such term is defined and used in the Lease Agreement, within 6 months of the Lease Date. During this period, RCL agrees to identify in writing to the County any significant operational matters requested by it to be incorporated into the Operation Protocol, and the County shall use commercially reasonable efforts to incorporate the matters identified by RCL into the Operation Protocol to the extent permitted under the Lease Agreement. Representatives from RCL shall be entitled to attend and participate in any meetings held on the Operation Protocol.

5. **Finalization of Preferential Berthing Rights Agreement.** The Parties agree to undertake all commercially reasonable efforts necessary to finalize the Preferential Berthing Rights Agreement, which Preferential Berthing Rights Agreement shall address, among other things, the manner of shared financing and construction of the Berth 10 facility, Berths 9 and/or 10 and the development of Berth 10. The Preferential Berthing Rights Agreement is also contemplated to replace the existing Terminal G Agreement and will provide for RCL's berthing rights at Terminal G.

6. **Effect of this MOU.** With the exception of the Negotiation Period which shall be legally binding on the Parties, the terms set forth herein are intended to be non-binding and the contemplated terms shall be subject to and superseded by the terms and conditions to be negotiated, approved and included in the Preferential Berthing Rights Agreement. The Parties agree to negotiate in accordance with the terms set forth in this Memorandum. A successful conclusion of negotiations pursuant to this Memorandum shall be evidenced through a binding Preferential Berthing Rights Agreement, which document shall comply with all applicable laws.

7. **Miscellaneous.** This Memorandum 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 Memorandum may be executed in multiple counterparts all of which taken together shall constitute one executed original. Signatures to this Memorandum may be delivered via facsimile transmission or via emailed .pdf file. Signatures delivered via either method shall be treated as original signatures.

[Remainder of page intentionally left blank; signature page follows]

COUNTY: MIAMI-DADE COUNTY, FLORIDA , a political subdivision of the State of Florida By : _____ Name: _____ Title: _____ Approved as to form and legal sufficiency: _____ Miguel A. Gonzalez Assistant County Attorney	RCL: ROYAL CARIBBEAN CRUISES LTD. DBA ROYAL CARIBBEAN GROUP DocuSigned by: By : <u>Joshua Carroll</u> 64D619DDDA2443E... Name: Josh Carroll Title: VP, Destination Development 
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