



Miami-Dade Legislative Item

File Number: 181787

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File Number: 181787 **File Type:** Resolution **Status:** Adopted
Version: 0 **Reference:** R-892-18 **Control:** Board of County Commissioners
File Name: AMENDMENT NO. 2 DISNEY CRUISE LINE **Introduced:** 7/13/2018
Requester: Port of Miami **Cost:** **Final Action:** 9/5/2018
Agenda Date: 9/5/2018 **Agenda Item Number:** 8J2

Notes: Title: RESOLUTION APPROVING AMENDMENT NO. 2 TO THE PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAGICAL CRUISE COMPANY LTD. D/B/A DISNEY CRUISE LINE (DISNEY) TO EXTEND THE TERM OF THE TERMINAL BERTHING AGREEMENT, INCREASE THE MINIMUM ANNUAL GUARANTEES, AMEND THE TERMINAL USAGE RIGHTS AND THE PARKING INCENTIVE, AND ESTABLISH PASSENGER SURPLUS MOVEMENTS AND A MINIMUM ANNUAL DOCKAGE GUARANTEE ALL WITH AN ESTIMATED FISCAL IMPACT OF \$26,400,000.00 IN ADDITIONAL PAYMENTS TO THE COUNTY; APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND DISNEY FOR PRIMARY NEGOTIATION RIGHTS FOR A TERM OF 18 MONTHS TO NEGOTIATE THE CONSTRUCTION OF A NEW CRUISE FACILITY ON THE SOUTH SIDE OF THE PORT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE EXECUTE SAME AND EXERCISE ALL RIGHTS CONTAINED THEREIN; AND APPROVING WAIVER OF RESOLUTION NO. 130-06

Indexes: PREFERENTIAL BERTHING AGREEMENT **Sponsors:** NONE

Sunset Provision: No **Effective Date:** **Expiration Date:**

Registered Lobbyist: None Listed

Legislative History

| Acting Body | Date | Agenda Item | Action | Sent To | Due Date | Returned | Pass/Fail |
|-------------------------------|----------|-------------|---------|---------|----------|----------|-----------|
| Board of County Commissioners | 9/5/2018 | 8J2 | Adopted | | | | P |

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|-------------------------------|--|----------|-------------------------------|---------------------|
| County Attorney | 8/28/2018 | Assigned | Hugo Benitez | |
| County Attorney | 8/28/2018 | Assigned | Office of Agenda Coordination | 8/28/2018 |
| REPORT: | RETURNED | | | |
| County Attorney | 8/27/2018 | Assigned | Miguel A. Gonzalez | 8/28/2018 |
| REPORT: | RETURNED | | | |
| Office of Agenda Coordination | 8/27/2018 | Assigned | County Attorney | 10/2/2018 |
| REPORT: | Revised reso and memo | | | |
| Office of Agenda Coordination | 7/17/2018 | Assigned | Jack Osterholt | |
| REPORT: | Returned | | | |
| County Attorney | 7/17/2018 | Assigned | Office of Agenda Coordination | |
| REPORT: | ITEM RETURNED | | | |
| County Attorney | 7/13/2018 | Assigned | Miguel A. Gonzalez | 7/16/2018 |
| REPORT: | ITEM RETURNED | | | |
| Office of Agenda Coordination | 7/13/2018 | Assigned | County Attorney | 9/5/2018 |
| REPORT: | Seaport - No Sponsor - Pending July Cmte - County Attorney: Miguel Gonzalez - Attachments: Agreement - Page Numbers: 20 - Note: Administration intends to waive this item out of committee and unto July 24th BCC. | | | |
| Jack Osterholt | 7/13/2018 | Assigned | Office of Agenda Coordination | 7/13/2018 7/13/2018 |

Legislative Text

TITLE

RESOLUTION APPROVING AMENDMENT NO. 2 TO THE PREFERENTIAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAGICAL CRUISE COMPANY LTD. D/B/A DISNEY CRUISE LINE (DISNEY) TO EXTEND THE TERM OF THE TERMINAL BERTHING AGREEMENT, INCREASE THE MINIMUM ANNUAL GUARANTEES, AMEND THE TERMINAL USAGE RIGHTS AND THE PARKING INCENTIVE, AND ESTABLISH PASSENGER SURPLUS MOVEMENTS AND A MINIMUM ANNUAL DOCKAGE GUARANTEE ALL WITH AN ESTIMATED FISCAL IMPACT OF \$26,400,000.00 IN ADDITIONAL PAYMENTS TO THE COUNTY; APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY AND DISNEY FOR PRIMARY NEGOTIATION RIGHTS FOR A TERM OF 18 MONTHS TO NEGOTIATE THE CONSTRUCTION OF A NEW CRUISE FACILITY ON THE SOUTH SIDE OF THE PORT; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE EXECUTE SAME AND EXERCISE ALL RIGHTS CONTAINED THEREIN; AND APPROVING WAIVER OF RESOLUTION NO. 130-06

BODY

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 Amendment No. 2 ("Amendment No. 2") for and on behalf of Miami-Dade County, in substantially the form attached and made part hereof, to the Preferential Berthing Agreement between Miami-Dade County ("County") and Magical Cruise Company Ltd. d/b/a Disney Cruise Line ("Disney") to extend the term of the terminal berthing agreement, increase the minimum annual guarantees, amend the terminal usage rights and the parking incentive, and establish passenger surplus movements and a minimum annual dockage guarantee, all with an estimated fiscal impact of \$26,400,000.00 in additional payments to the County.

Section 2. Approves the Memorandum of Understanding between the County and Disney, attached as Exhibit B to attached Amendment No. 2, providing for primary negotiation rights for a term of 18 months to negotiate the construction of a new cruise facility on the south side of the Port.

Section 3. Authorizes the County Mayor or County Mayor's designee to execute the documents approved pursuant to Sections 1 and 2 hereof and to exercise all rights contained therein.

Section 4. Approves waiver of provisions of Resolution No. R-130-06 requiring execution by all parties of the agreement prior to approval by this Board for the reasons stated in the accompanying County Mayor's memorandum.

HEADER

Date:

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

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving and Authorizing Execution of Amendment No. 2 to the Preferential Berthing Agreement Between Miami-Dade County and Magical Cruise Company Ltd d.b.a. Disney Cruise Line and a Memorandum of Understanding

STAFF RECOMMENDATION

Recommendation

It is recommended the Board of County Commissioners (Board) approve the accompanying resolution approving and authorizing the execution of Amendment No. 2 (“Second Amendment”) to the Preferential Berthing Agreement between Miami-Dade County (“County”) and Magical Cruise Company d.b.a. Disney Cruise Line (“Disney”) and a Memorandum of Understanding (“MOU”).

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 Amended and Restated Cruise Terminal Agreement 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 Agreement.

Fiscal Impact/Funding Source

This item accomplishes two objectives: (1) an Amendment No. 2 to the Preferential Berthing Agreement with changes to preferential berthing rights, minimum annual guarantees and term, and (2) outlines a Memorandum of Understanding (MOU) for the construction of a new cruise terminal on the south side of the port for Disney.

1. This Agreement provides the County with a continuation of Disney’s Minimum Annual Guarantee of 100,000 Passenger Movements during Fiscal Year 2018. However, Disney agrees to increase its Minimum Annual Guarantee to the County to 150,000 Passenger Movements each Fiscal Year, commencing Fiscal Year 2019 through Fiscal Year 2022. Additionally, Disney is expecting to increase its passenger volumes by replacing its current seasonal service with a year-round 5/5/4 rotation onboard a large vessel (minimum 3,500 passengers), commencing January 2023, increasing its Minimum Annual Guarantee to 360,000 Passenger Movements during Fiscal Year 2023 through the Term. Starting Fiscal Year 2019, Disney may accrue Passenger Surplus Movements to offset shortfalls in its Minimum Annual Guarantee, similar to other cruise line agreements, as further detailed in the Background Section of this memorandum.

Commencing Fiscal Year 2019, in addition to guaranteeing Minimum Annual Wharfage revenue, Disney also guarantees Minimum Annual Dockage revenue based on the then-applicable dockage Tariff rate and 80 percent of Disney’s anticipated vessel calls in a given Fiscal Year. This represents an additional guarantee of approximately \$890,000 in Fiscal Year 2019.

The Agreement is expected to generate \$2.7 million in gross revenues during Fiscal Year 2019, based on Minimum Annual Guarantees and shall increase by three percent each year through Fiscal Year 2022. Upon the start of the year-round 5/5/4 service, the County is expected to generate \$7.2 million in FY 2023.

The County shall continue to provide Disney a share of its parking revenue, expected to be approximately \$465,000 during Fiscal Year 2019, as provided for with other cruise line agreements.

2. The MOU between the Parties outlines the intention to increase Disney's berthing capacity at PortMiami by offering it a first right to enter into negotiation for the potential development of a new Terminal Project located on the south side of the Port, to the east of existing Terminal J. Such facility will allow the Port to expand its cruise business by allowing Disney to homeport the large Disney vessels capable of carrying 3,500+ passengers. The project is further explained in the Background section of this memorandum.

Disney is current on all its financial obligations to the Port and their account is in good standing.

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 II, Assistant Director.

Background

Magical Cruise Company Ltd., d.b.a. Disney Cruise Line, is a family-inspired vacation company. The cruise line, headquartered in London, United Kingdom, currently operates a fleet of four vessels with another three vessels on schedule for delivery by 2023.

On November 20, 2012, the Board approved Resolution No. R-987-12, which authorized the execution of a Preferential Berthing Agreement with Disney. The agreement had a two-year term, with two one-year renewal options. The Agreement has been profitable for both parties as it has provided the Port with guaranteed passenger volumes and revenues in exchange for preferential berthing rights at Terminal F and a parking revenue incentive for Disney.

On December 1, 2015, the Board approved Amendment No. 1 via Resolution No. R-1080-15, which authorized the extension of the base agreement by two years, with a one-year renewal option. The Amendment, which will expire September 30, 2018, guarantees preferential berthing rights at Terminal F and a parking revenue incentive in exchange for guaranteed passenger volumes and revenues.

Due to its success and an aggressive new-build program, Disney continues to seek growth at PortMiami. With three new vessels on order through 2023, the cruise line desires to homeport a large vessel year-round at PortMiami, commencing January 2023, on a 5/5/4 rotation, and a second large vessel starting seasonally January 2024, on a 3/4 rotation.

Responding to the opportunity to grow its presence in Miami, this proposed Amendment No. 2 to the Agreement is respectfully recommended for approval. Under the proposed terms, Disney commits the following to the County:

- Passenger Guarantees will remain at a minimum of 100,000 Passengers Movements during Fiscal Year 2018, and increase to 150,000 minimum Passenger Movements for every Fiscal Year from Fiscal Year 2019 to Fiscal Year 2022. Upon the start of its new year-round service, the Minimum Annual Guarantee shall increase to

360,000 Passenger Movements during Fiscal Year 2023 through the Term (April 30, 2024).

- Commencing Fiscal Year 2019, Disney shall guarantee Minimum Annual Dockage revenue calculated based on the then-existing dockage Tariff rate times the Disney vessel's gross registered tonnage, times the anticipated annual vessel calls, times .80 (80 percent "Minimum Annual Dockage Guarantee").

In order for the Port to receive this pledge, Disney will receive the following incentives:

- Disney shall have year-round preferential berthing rights at Terminal F on Sundays during Fiscal Years 2018 and 2019, and rights at New Terminal C on Saturdays, commencing Fiscal Year 2020 through the Term.
 - o The New Terminal B project, initially slated to be complete on November 9, 2019 has been delayed (currently projected for completion on February 10, 2018). Disney agrees to share use of the existing terminals B and C and the facilities that support their operations, berthing its vessel at existing Terminal C, (with the use of only one Port passenger boarding bridge) until New Terminal B is complete.
- Disney may accrue and carry forward up to 150,000 Passenger Moves starting Fiscal Year 2019 to offset shortfalls in its Minimum Annual Guarantee. Disney shall be limited to using a maximum of 75,000 Passenger Movements in any Fiscal Year and within two consecutive Fiscal Years.
- Disney shall continue to receive a parking incentive based on the proportion of Disney multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port during the Term. This incentive is similar to other cruise line agreements with the County.

In addition to this Amendment to the Preferential Berthing Rights Agreement, the Parties have agreed to enter into an MOU, attached as Exhibit B to the Amendment. Under the MOU, Disney will have the first right to enter into negotiations with PortMiami for the purpose of agreeing upon a binding development and preferential use agreement (subject to Board approval before it becomes effective) with respect to a potential new cruise terminal on the south side of PortMiami, east of the existing Terminal J. In addition, the MOU also grants Disney the first right to negotiate preferential berthing rights for Sundays at Terminal J, commencing in 2024.

Such binding agreement would include all specifics of the project (i.e., financing commitments, (including the implementation of a passenger capital recovery surcharge) and construction deadlines, with a goal of commencing vessel operations by December 2023) and would also entail amendment of the existing Terminal Usage Agreement to provide for, among other things, modification of Disney's Minimum Annual Guarantees, Preferential Berthing Rights, Marketing Incentives, and financing commitments.

Disney intends for the prospective new terminal to serve as a homeport to its large Disney vessels capable of carrying 3,500+ passengers. Construction would include a cruise ship pier complex capable of accommodating vessels up to 1,150 feet in length in a homeport operational capacity, including a rehabilitated bulkhead and apron, terminal complex, provision staging and loading areas, bus and taxi staging areas, and a parking garage of a suitable size.

Before construction of Disney's proposed terminal is possible, it will be necessary to successfully complete the previously announced widening of the ship channel and turning basin on the south side of the Port for cargo and cruise usage, and the acquisition of rights to the necessary cargo land, currently under lease to Seaboard Marine. If construction of the prospective new terminal is not viable or unsuitable, the parties may explore

alternative Port berthing options on the north side (available berths or terminal sites) to the extent available and not precluded by or inconsistent with prior Port contracts or oral commitments.

Disney's primary negotiation rights pursuant to the MOU will last 18 months from the date of the MOU's execution. Such rights will terminate after 18 months, unless the parties reach a written agreement to continue their negotiations, or unless the parties agree to an earlier termination date, agree on and secure the requisite approvals (including Board approval) for a binding agreement, or if Disney notifies the County that its fleet deployment plans will obviate the need for the new terminal.

Pursuant to the MOU, the County commits to negotiating in good faith with Disney 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. It is also recommended that the Board of County Commissioners waive the requirements of Resolution No. R-130-06 requiring execution of the agreement by all parties, prior to the Board's approval.

The effective date of this Amendment shall be after approval of this Amendment No. 2 by the Miami-Dade County Board of County Commissioners and the expiration of any applicable Mayoral Veto period. The Term of the Agreement is amended to April 30, 2024.

Jack Osterholt
Deputy Mayor

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