
MEMORANDUM OF UNDERSTANDING

BETWEEN

BROWARD COUNTY

AND

ROYAL CARIBBEAN CRUISES LTD.

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 14th day of March, 2017 (the “**Effective Date**”), by and between:

- A. **BROWARD COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as “**County**”), and;
- B. **ROYAL CARIBBEAN CRUISES LTD.**, a Liberian corporation (hereinafter referred to as “**RCL**”).

Each of the above entities shall be hereinafter individually referred to as a “**Party**” and collectively, as the “**Parties**”.

RECITALS:

WHEREAS, County owns and operates Port Everglades, a deep water port and appurtenant facilities in Broward County, Florida (the “**Port**”); and

WHEREAS, RCL is a leading international cruise company (with a number of cruise lines including Royal Caribbean International, Celebrity Cruises and Azamara Club Cruises) that presently uses the Port as a homeport, and RCL has experience in the development, construction and operation of cruise ship facilities; and

WHEREAS, the Parties desire that (i) the County engage RCL, or a County approved subsidiary or affiliate of RCL, as construction manager to undertake certain construction improvements to Cruise Terminal 25 at the Port (“**Terminal 25**”) and related ground transportation areas (“**GTA**”), and (ii) RCL be provided with certain preferential rights to use Terminal 25, Cruise Terminal 18 (“**Terminal 18**”) and Cruise Terminal 29 (“**Terminal 29**”) at the Port in exchange for certain financial guarantees, all in accordance with the terms and conditions contained herein; and

WHEREAS, the Parties have decided to enter into this non-binding MOU which purpose is to provide a framework and summarize the basic principles and general terms contemplated by the Parties in order to prepare binding legal agreements and prepare for the implementation of the Terminal 25 project and related construction activities.

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

1) **Preamble**

County and RCL agree to negotiate in good faith, terms and conditions of a (i) Construction Agency Agreement (the “**Construction Agency Agreement**”) or other suitable form of agreement for the construction, management and oversight of construction improvements to Terminal 25 and related GTA (the “**Terminal 25 Project**”) as more particularly described in Section 2, and (ii) new Passenger Cruise Terminal and Berth User Agreement (the “**Berthing Agreement**”) governing RCL’s preferential use of Terminal 18, Terminal 25 and Terminal 29 as more particularly described in Section 3 herein. The Construction Agency Agreement and Berthing Agreement are hereinafter collectively referred to as the “**Transaction Documents**”. The Parties anticipate execution of Transaction Documents no later than May 10, 2017.

2) **Construction Agency Agreement or Other Suitable Contracting Agreement**

The Parties are proposing and shall negotiate, subject to the terms hereof, that County and RCL, or a County approved subsidiary or affiliate of RCL, will enter into the Construction

Agency Agreement or other suitable construction contracting agreement for the construction, management and oversight of construction improvements to Terminal 25 and related GTA. The Construction Agency Agreement or other suitable construction contracting agreement shall contain the following terms and conditions, in addition to other standard terms and conditions contained in similar County agreements:

- a) The Terminal 25 Project shall consist of certain construction improvements to Terminal 25, as generally described as Option #2 in the conceptual plans contained in that certain "Renovation of Terminal 25 at Port Everglades- Programming Study- Final" dated January 15, 2016 (the "**Programming Study**"), prepared by Bermello & Ajamil (the "**Architect**"), and related GTA improvements.
- b) In the event the Parties negotiate a Construction Agency Agreement to provide for the construction and efficient management and oversight of the Terminal 25 Project, County shall appoint RCL, or a County approved subsidiary or affiliate of RCL ("**Construction Agent**") to act as County's exclusive agent to manage and coordinate the development and construction of all aspects of the Terminal 25 Project, substantially in accordance with the Plans and Specifications (as defined below). County acknowledges that all costs and expenses associated with the Terminal 25 Project shall be borne solely by County.
- c) Construction Agent, with the assistance of engineers, architects and other professionals as mutually agreed upon by the Parties, would undertake all pre-development activities required to advance the Terminal 25 Project, including but not limited to, preparation of construction cost estimates, construction schedules, surveys, environmental studies (if required), etc. County shall provide Construction Agent and the contractors with whatever licenses may be required in order to enter and access the Terminal 25 Project site to perform the pre-development activities.
- d) The Parties agree that the Terminal 25 Project shall be undertaken pursuant to a design-build contract with a qualified general contractor that shall be selected in accordance with a request for qualifications and bid process undertaken in accordance with RCL's current practice for selection of contractors and all applicable Florida laws and County ordinances and policies with respect to contracting of public projects in Broward County. The County intends to waive its procurement code in connection with the Terminal 25 Project to allow for RCL to conduct the activities described herein.
- e) The Parties shall mutually agree on a final project budget and design features based upon construction cost estimates prepared during the pre-development period and the bids received during the bid process (the "**Project Budget**"). The Project Budget is currently estimated to be approximately Seventy Five Million Dollars (\$75,000,000). Construction Agent would manage the Project Budget during pre-development and construction of the Terminal 25 Project and all required increases to the Project Budget shall be the sole responsibility of County.

- f) The general construction contract shall (i) be executed either in the name of and on behalf of County by Construction Agent solely in its capacity as Construction Agent (and not as principal) pursuant to the authority provided in the Construction Agency Agreement or such other suitable form of construction contracting agreement, and (ii) provide for a fixed bid price or a guaranteed maximum price not to exceed the amount allocated to the cost of the work to be performed thereunder as set forth in the Budget (with cost savings anticipated in connection with value engineering), and (iii) include payment retainages, and (iv) include a date certain for completion with liquidated damages for delays, and (v) require the general contractor to post payment and performance bonds in an amount equal to one hundred percent (100%) of the total construction price of the contract, and (vi) require the general contractor to provide acceptable types and levels of insurance as requested by the Parties, and (vii) comply with all applicable State and County legal requirements, all as will be more particularly described in the Construction Agency Agreement or such other suitable form of construction contract agreement.
- g) The selected general contractor shall directly engage the Architect to complete the final design and specifications for the Project (the “**Plans and Specifications**”), all in accordance with selected conceptual plans contained in the Programming Study. The Plans and Specifications shall be reviewed and approved by the Parties, the process of which shall be further detailed in the Construction Agency Agreement or such other suitable construction contract agreement. The Parties agree that as RCL will be the primary user of Terminal 25, Construction Agent shall review and approve the design of the improvements, especially with respect to aesthetics and terminal functionality.
- h) County shall appoint a representative that will (i) assist Construction Agent with obtaining and expediting all required permits and approvals and (ii) act as a liaison with Construction Agent regarding such permits and approvals.
- i) Construction Agent shall cause the Terminal 25 Project to be constructed substantially in accordance with the Plans and Specifications and in compliance with all applicable laws.
- j) County shall be solely responsible for the payment of all contractor and consultant invoices in connection with the Terminal 25 Project, which shall be submitted by Construction Agent in accordance with the procedures set forth in the Transaction Documents.
- k) The Parties anticipate that the Terminal 25 Project shall be substantially complete no later than October 31, 2018.
- l) The Transaction Documents shall provide County with audit rights of all contract provisions and contractor and subcontractor payments for the Terminal 25 Project.

3) **Passenger Cruise Terminal and Berth User Agreement**

The Parties are proposing, subject to the terms hereof, that County and RCL will enter into the Berthing Agreement that shall govern RCL's use of Terminal 18, Terminal 25 and Terminal 29. The Berthing Agreement shall contain the following terms and conditions:

- a) The initial term shall commence on January 1, 2018 and shall expire on September 30, 2026 (the "**Initial Berthing Term**"). In addition, RCL will have the option to extend the Berthing Agreement for one (1) additional, four (4) year term, followed by one (1) additional five (5) year term, by providing the County with six (6) months prior written notice (each an "**Extension Berthing Term**", and together with the Initial Berthing Term, the "**Berthing Term**"). In the event RCL exercises one or both of the Extension Berthing Terms, the Parties shall meet to negotiate in good faith the amount of (i) RCL's Annual Guaranteed PUC Payment (as hereinafter defined), and (ii) the PUC (as hereinafter defined) to be paid during the applicable Extension Berthing Term. If the Parties are unable to reach agreement on the aforesaid amount within one hundred twenty (120) days from the date RCL gives the written extension notice, the Berthing Term shall not be extended.
- b) RCL shall have preferential berthing rights at Terminal 18, Terminal 25 and Terminal 29 for all of its brands and vessels (including, but not limited to, Royal Caribbean International, Celebrity Cruises and Azamara Club Cruises), whether now existing or hereafter constructed or acquired. The preference at Terminal 18 and Terminal 25 shall be seven (7) days a week (Monday-Sunday) and the preference at Terminal 29 shall be four (4) days a week (Friday-Monday).
- c) RCL shall provide County with twelve (12) months advance notification of the desired dates for ships to call under the Berthing Agreement; prior to Fall season (October through May) and Summer season (June through September). The County shall not assign other cruise line vessels to Terminal 18, Terminal 25 and Terminal 29 (Friday-Monday) until such time as County has confirmed RCL's berthing requests. RCL may submit berthing requests for other terminals at the Port, and County shall use best efforts to accommodate the requests subject to other existing berthing commitments at the time of the request. County shall respond to all RCL berthing requests within seven (7) days of receipt of the request.
- d) In addition to the preferential berthing status set forth above, in the event of unscheduled Oasis class calls made necessary due to unforeseen events such as weather conditions, closures of other ports, and ship mechanical failures, Terminal 18 will be made available to the impacted Oasis class ship within twelve (12) hours of receipt of a berth request from RCL.
- e) During the first year of the Berthing Agreement, RCL shall pay County a port usage charge of Fourteen and 00/100 Dollars (\$14.00) per passenger move for each passenger using Terminal 18, Terminal 25 and Terminal 29 ("**PUC**"). Beginning in contract year two (January 1, 2019) and continuing for the duration of the Berthing Term, County may increase the PUC however annual increases may not exceed the lesser of (i) the average percentage increase from

the prior contract year in the published tariff rates for passenger wharfage and dockage (ii) three and one half percent (3.5%). PUC shall be an "all-in" charge covering passenger wharfage, dockage, harbor master, portable water, line handling, water hook-up, cruise terminal overtime, cruise terminal electricity and Broward Sheriff's Office law enforcement services for the cruise terminals.

- f) New levies, charges and fees enacted by any Federal, State or local governmental entity (with the exception of County) with respect to the Port specifically and assessed against all multi-day passenger cruise lines shall not become effective for a period of six (6) months after the later of (i) the imposition of the new fee, and (ii) the date RCL is notified of the new fee. New levies, charges and fees enacted by the County shall be included in the next years PUC, subject to the annual cap on increases set forth in subsection (e) above.
- g) County shall at all times offer RCL and its affiliated companies the best terms, cost structure and pricing, whose net effect is at least equal to or better than any other cruise line user of the Port.
- h) During the Term, RCL shall provide the County with a minimum annual guarantee of PUC in an amount equal to (i) the then current PUC, multiplied by (ii) One Million Three Hundred Thousand (1,300,000) passenger moves ("**Annual Guaranteed PUC Payment**"). Notwithstanding the foregoing, due to the abbreviated length of the final contract year, the Annual Guaranteed PUC Payment for such contract year shall be calculated by multiplying (i) the then current PUC, by (ii) a number of passenger moves to be negotiated by the Parties and provided in the Transaction Documents.
- i) Within sixty (60) calendar days following the end of each contract year, County shall calculate the actual PUC paid by RCL for such contract year based on the passenger manifests submitted by RCL, and shall send written notice (the "**PUC Differential Notice**") to RCL setting forth the difference (positive or negative) between the actual PUC paid and the Annual PUC Guaranteed Payment for such calendar year.
- j) To the extent the RCL pays PUC in excess of the Annual Guaranteed PUC Payment in any year of the Berthing Term, the PUC in excess of the Annual Guaranteed PUC Payment shall be held in a reconciliation account and made available to RCL to offset any shortfalls in the Annual Guaranteed PUC Payment in any future year of the Berthing Term. In no event shall funds held in the reconciliation account exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) (for an aggregate period to be negotiated) at any one time. All banked amount remaining at the end of the Berthing Term shall be retained by County.
- k) To the extent the PUC paid by RCL in any year of the Berthing Term is less than the Annual Guaranteed PUC Payment, and there is no surplus balance in the reconciliation account available to offset such shortfall, RCL may elect to defer payment of shortfall amounts (for an aggregate period to be negotiated) in an amount not to exceed Three Million Five Hundred Thousand Dollars

(\$3,500,000). Any contract year shortfall amount elected by RCL to be deferred shall be paid in full by RCL to County within eighteen (18) months of the date of RCL's receipt of the PUC Differential Notice (RCL may elect to apply any surplus funds in the reconciliation account towards payment of such deferred amount).

- l) During the Berthing Term, RCL may notify County (a maximum of three times per contract year) to increase or decrease the PUC for some or all of the remaining duration of such contract year.
- m) In consideration of the brand recognition RCL brings to the Port and County and the related economic benefits derived by the Port and County due to RCL's business operations at the Port, RCL shall receive from County a passenger movement volume incentive payment when certain passenger volume thresholds that exceed one million three hundred thousand (1,300,000) passenger moves are met, the details of which will be negotiated and agreed upon in the Berthing Agreement.
- n) No capital cost recovery charge shall be paid by RCL in connection with the Terminal 25 Project. Any future capital improvements requiring a capital cost recovery charge shall be mutually agreed upon by the Parties.
- o) County shall continue to maintain Terminal 18, Terminal 25 and Terminal 29 as first class cruise ship berths and passenger terminals.
- p) RCL shall have reasonable approval rights over the nature and type of advertising contained within Terminal 18, Terminal 25 and Terminal 29 during the Berthing Term.
- q) RCL shall have the right to terminate the Berthing Agreement on sixty (60) days' notice in the event of a "Material Adverse Change", which shall be defined as a new port charge that results in an adjustment to the PUC in an amount greater than fifteen percent (15%) if RCL were to continue using the Port.
- r) RCL shall be required to post an irrevocable letter of credit in the amount of Two Hundred Thousand Dollars (\$200,000) to secure its obligations under the Berthing Agreement.
- s) The other terms and conditions in the Berthing Agreement shall be consistent with those terms contained in the existing Passenger Cruise Terminal and Berth User Agreement between the Parties dated December 4, 2007, as amended, except as otherwise mutually agreed.

4) **Termination**

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

- a) Execution and delivery of Transaction Documents; or
- b) Mutual agreement of the Parties to terminate; or

- c) Ninety (90) days from the Effective Date, unless the Parties agree in writing to an extension.

Upon the occurrence of one of the foregoing events, this MOU shall terminate automatically without further notice.

5) **Form of Transaction Documents**

The description of the Transaction Documents set forth herein is for ease of reference and general description of the transaction contemplated between the Parties. The ultimate Transaction Documents to be executed by the Parties may be more, or fewer, in number, and may be renamed to accomplish the intent of the Parties.

6) **Effect of this MOU**

The description of the Project and the terms set forth herein are intended to be non-binding and the description and contemplated terms shall be subject to and superseded by the terms and conditions to be negotiated, approved and included in the Transaction Documents, which documents shall comply with all applicable laws. In the event any element of the Transaction Documents cannot be achieved or implemented due to legal issues or impediments, the Parties will attempt in good faith to explore alternative viable options or elements.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Memorandum of Understanding on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action, and ROYAL CARIBBEAN CRUISES LTD., a Liberian corporation, signing by and through its Vice-President, duly authorized to execute same.

COUNTY:

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor

_____ day of _____, 2017

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
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By: _____
Russell J. Morrison (3/8/17)
Senior Assistant County Attorney

WITNESSES:

ROYAL CARIBBEAN CRUISES LTD.

By: _____
(Signature)

By: _____

DUSTIN NAJON

(Print Name)

(Print Name and Title)

(Signature)

8 day of March, 2017

GENEVIEVE EVELYN

(Print Name)

Michael Jones
Vice President
Supply Chain Management

