



THE PORT
OF LOS ANGELES
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: SEPTEMBER 21, 2011

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - PROPOSED SETTLEMENT AGREEMENT, MUTUAL RELEASE AND COMPROMISE, AND INDEMNITY AGREEMENT WITH PACIFIC CRUISE SHIP TERMINALS, LLC

SUMMARY:

Staff recommends that the City of Los Angeles Harbor Department (Harbor Department) enter into a Settlement Agreement, Mutual Release and Compromise, and Indemnity Agreement (Settlement Agreement) with Pacific Cruise Ship Terminals, LLC (PCST) to pay PCST \$795,908 to resolve a dispute relative to expenses and compensation. The payment will settle the outstanding differences with PCST regarding the expenses incurred for its operations of the cruise terminal from the full calendar years 2003 through 2010.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the proposed Settlement Agreement with Pacific Cruise Ship Terminals, LLC;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the proposed Settlement Agreement; and
3. Adopt Resolution No. _____.

DISCUSSION:

Background – The Harbor Department entered into Operating Agreement No. 2264 (Operating Agreement) with PCST for a term of 18 months, effective January 1, 2003, for the management and operation of the cruise terminal. At the end of the term in mid-2004, the agreement was extended for an additional 12 months and expired on June 30, 2005. Although it was stated in the initial Board report that during the performance of the agreement, the Harbor Department would issue a Request for Proposal (RFP) to find a long-term operator, the issuance of such a RFP did not take place. Instead, PCST continued operating the terminal on a month-to-month basis at the same rate of compensation and upon the same terms and conditions as provided in the original agreement. To date, PCST remains on holdover and continues to operate the cruise terminal (Transmittal 2).

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The Operating Agreement requires PCST to collect the revenues from lay day and terminal operating fees, to pay terminal operating expenses, and to report to the Harbor Department on the operations of the terminal. Lay day fees are those fees charged to a cruise line for each day that the ship docks at the Port of Los Angeles. The Operating Agreement also requires PCST to fulfill a variety of operational and administrative duties that include, among other items, submitting a quarterly written report on the progress and status of the terminal operations; collecting fees and remitting them to the Harbor Department; providing a quarterly reconciliation of the collection and disbursement of lay day fees; conducting an annual review of lay day fees and terminal operating expenditures; providing a final accounting (including vessel charges) at the end of the term of the Operating Agreement; and providing a quarterly reconciliation of the vessel charges. Joint reconciliations of the submitted financial data were to be discussed and approved by the Harbor Department, but most of the reporting and reconciliations did not occur. During the period of 2006 through 2009, negotiations were attempted to enter into a new Operating Agreement, but these discussions were unsuccessful.

In mid-2010, PCST submitted several expenditures to the Harbor Department for payment. In assessing the appropriateness of reimbursing those expenses to PCST, the Harbor Department followed the steps outlined in the Operating Agreement, with respect to the standard financial data submission. Consequently, at the request of the Real Estate Division, Management Audit staff conducted a desk review of PCST's financial information, a process that is less thorough than an audit and does not include extensive sample testing of data. Based on the initial results of this review, concerns arose as to the lack of rigor of a desk review and a complete financial audit was conducted. This audit covered calendar years 2003 through 2009.

The audit identified several problems. For example, it found that spending sometimes exceeded the budgeted amounts. It could not be validated as to whether discussions were held between the two parties to allow such spending. The audit also found evidence of weak internal controls and accounting for costs and revenues on a net basis, a procedure that does not follow generally accepted accounting principles. The audit also found no evidence to confirm that quarterly reconciliations of PCST's revenues and expenses occurred on a regular basis, as required. The audit concluded that both parties contributed to lapses, as poor and insufficient communications on both sides added to the lack of clarity. After discussions with PCST, and given the long period of time that has passed with the inability to substantiate the sequence and occurrence of past events, Harbor Department management is recommending a negotiated settlement between the parties to address the costs associated with all operations for calendar years 2003 through 2010. Calendar year 2010 is included, as the expenses incurred last year were not in dispute and had been on hold until the 2003-2009 periods had been resolved.

In sum, the audit found that PCST had incurred significant costs associated with its operations of the cruise terminal that totaled over \$1.3 million through the end of calendar year 2010 that the Harbor Department needs to pay. Offsetting this were outstanding bills owed by PCST to the Harbor Department that included a small portion due to incorrect accounting entries. Together these entries totaled over \$500,000, with the net result being the settlement amount that the Harbor Department is to pay PCST (\$795,908).

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While this requested Board action will resolve the dispute related to the operating expenses incurred by PCST, a separate Board report will seek to end the holdover through the establishment of a temporary Operating Agreement with this cruise terminal operator.

Concurrent Agenda Item – This proposed Settlement Agreement is being presented to the Board concurrently with a proposed new short-term Operating Agreement (Transmittal 1). In this concurrent proposal, the Harbor Department recommends that it enter into a new temporary Operating Agreement with PCST through September 30, 2012. The proposed interim Operating Agreement will have a 21-month term, commencing January 1, 2011 through September 30, 2012. This will provide the Harbor Department continuity for the operation of the cruise terminal. During the period of this temporary agreement, the Harbor Department will issue a RFP to select a service provider for the long-term operation of the cruise terminal.

Settlement Terms – The Harbor Department will make a one-time payment in the amount of \$795,908 to PCST. Upon the acceptance by PCST of this payment, both parties are absolved from any further liability to each other related to terminal operations during the period from January 1, 2003 to December 31, 2010.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Settlement Agreement with PCST to resolve an outstanding dispute related to expenses and compensation. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment effect.

FINANCIAL IMPACT:

The proposed Settlement Agreement requires the Harbor Department to pay PCST the sum of \$795,908. This payment settles the matters discussed in the Settlement Agreement and bars any further claims on this matter by PCST or the Harbor Department. Funds are available in the amount of \$795,000 and \$908 in Account 54290, Center 0424, Program 000. The \$795,000 amount had been set aside as part of the budget for Fiscal Year 2010/2011 and will be charged upon approval of the Settlement Agreement. The remaining \$908 has been budgeted as part of the operating expenses associated with operating the cruise terminal in the current Fiscal Year 2011/2012.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Settlement Agreement as to form and legality.

TRANSMITTALS:

1. Proposed Settlement Agreement
2. Site map

FIS Approval: KS (initials)

CA Approval: KS (initials)



KARL K.Y. PAN
Interim Director of Real Estate



KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

KP:AB:ST:raw
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